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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0111]

RIN 0579–AC87

Importation of Ash Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of nursery stock to prohibit or restrict the importation of ash (*Fraxinus* spp.) plants for planting, except seed, from all foreign countries except for certain areas in Canada that are not regulated areas for emerald ash borer. This action is necessary to prevent further introductions of this plant pest into the United States and to prevent the artificial spread of the emerald ash borer.

DATES: This interim rule is effective September 23, 2008. We will consider all comments that we receive on or before November 24, 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-2007-0111* 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–2007–0111, 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–2007–0111.

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. Arnold T. Tschanz, Senior Risk Manager, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; (301) 734–5306.

SUPPLEMENTARY INFORMATION:

Background

The emerald ash borer (EAB, *Agrilus planipennis*) is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). The insect, which is indigenous to Asia and known to occur in China, Korea, Japan, Mongolia, the Russian Far East, and Taiwan, eventually kills healthy ash trees after it bores beneath their bark and disrupts their vascular tissues.

EAB was first found in North America in ash trees in several counties in Michigan in July 2002, and subsequently in an area in Ontario, Canada, and in the States of Illinois, Indiana, Ohio, Pennsylvania, and Maryland. These States have quarantined the EAB-infested areas and imposed restrictions on the intrastate movement of certain articles from the regulated areas to prevent the artificial spread of EAB within each State. Officials of the United States Department of Agriculture (USDA) and of State, county, and city agencies have been conducting intensive survey and eradication programs in the infested areas in the affected States.

Similarly, provincial officials in Ontario and officials of the Canadian Food Inspection Agency (CFIA) have been conducting extensive survey and eradication activities in the infested areas in Ontario. Plant health officials in the United States and Canada have been working cooperatively to establish a regulatory framework to address the risk of the artificial spread of EAB between the two countries. To that end, on June 1, 2007, we published an interim rule in the **Federal Register** (72 FR 30462–30468, Docket No. APHIS–2006–0125) which amended our regulations in 7 CFR part 319 to restrict or prohibit the importation of EAB host material into the United States from EAB-infested areas of Canada. That interim rule also prohibited the importation of all ash trees that originate in any county or municipal regional county in Canada regulated because of the EAB, i.e., those areas of Canada regulated under the Canadian Ministry of Agriculture and the CFIA's EAB Infested Place Declaration and Orders.[1]

The regulations in 7 CFR part 319, ''Foreign Quarantine Notices,'' prohibit or restrict the importation of certain plants and plant products to prevent the introduction or dissemination of plant pests and noxious weeds into the United States. Specifically, the regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Nursery stock, plants, and other propagative plant material that cannot be feasibly inspected, treated, or handled to prevent them from introducing plant pests new to or not known to be widely prevalent in or distributed within and throughout the United States are listed in § 319.37–2 as prohibited articles. Prohibited articles may not be imported into the United States unless imported by the USDA for experimental or scientific purposes, or under specified safeguards. These prohibited articles are listed in paragraph (a) of § 319.37–2.

Under paragraph (a) of § 319.37–2, ash (*Fraxinus* spp.) plants for planting, except seed, from Europe have been

[1] Infested Place Declaration and Orders are the means by which the CFIA regulates EAB-infested areas within Canada. Links to the Infested Place Declaration and Orders for the infested areas in Canada and other information about Canada's EAB program can be viewed online at the CFIA's Web site at *http://www.inspection.gc.ca/english/plaveg/pestrava/agrpla/mc/2007ontarioe.shtml.*

prohibited because of *Pseudomonas savastanoi* var. *fraxini,* canker and dwarfing disease of ash. In addition, as of the June 1, 2007, effective date of the interim rule discussed above, ash (*Fraxinus* spp.) plants for planting, except seed, are also prohibited from any county or municipal regional county in Canada regulated because of EAB.

As noted previously, EAB is indigenous to Asia and is known to be prevalent in several countries in that region. We do not, however, know the full extent of the distribution of EAB throughout Asia and in other regions, nor do we know if there are other serious plant pests affecting *Fraxinus* spp. plants for planting present elsewhere in the world. Therefore, we are further amending the regulations in § 319.37–2 to prohibit ash (*Fraxinus* spp.) plants for planting, except seed, from all foreign countries except those areas of Canada that are not regulated because of EAB. To reflect this prohibition, we are also amending § 319.37–7(a)(3) by removing *Fraxinus* spp. from the list of plants requiring postentry quarantine. This action is necessary to prevent the artificial spread of EAB into uninfested areas of the United States.

We note that *Fraxinus* spp. plants for planting are only occasionally imported into the United States, none have been imported from any country other than Canada in several years, and regulations are already in place with respect to *Fraxinus* spp. plants for planting from Canada. Therefore, the practical effect of this rule will be minimal. In addition, we would, if requested, consider lifting the prohibition in whole or in part after completing a pest risk analysis to determine the pest risk associated with the importation of *Fraxinus* spp. plants for planting from a particular country.

Emergency Action

Immediate action is necessary to prevent the spread of EAB into noninfested regions of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

The following analysis addresses the economic effects of this rule on small entities, as required by the Regulatory Flexibility Act.

This rule amends the regulations to prohibit or restrict the importation of ash (*Fraxinus* spp.) plants for planting, except seed, from all foreign countries except for certain areas of Canada which are not currently regulated for emerald ash borer. *Fraxinus* spp. plants for planting are only occasionally imported into the United States, and in these few importations the number of ash plants is small. During the fiscal years 2005 and 2006, no *Fraxinus* spp. plants for planting were imported from any country except Canada. As discussed above, the importation from Canada of *Fraxinus* spp. plants for planting, and other articles, is already regulated to prevent the artificial spread of EAB. Therefore we do not anticipate that this rule will have any economic effect on any entities, large or small.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 319.37–2, paragraph (a), the table entry for ''*Fraxinus* spp. (ash)'' is revised to read as follows:

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * * * * * *		
Fraxinus spp. (ash)	All except for any county or municipal regional county in Canada not regulated because of the emerald ash borer.	*Agrilus planipennis* (emerald ash borer).
	Europe	*Pseudomonas savastanoi* var. *fraxini* (Brown) Dowson (Canker and dwarfing disease of ash).
* * * * * * *		

* * * * *

§ 319.37–7 [Amended]

■ 3. In § 319.37–7, paragraph (a)(3), the table is amended by removing the entry for ''*Fraxinus* spp. (ash)''.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22194 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 650

RIN 0578–AA41

[Docket No. NRCS–IFR–08001]

Regulations for Complying With the National Environmental Policy Act

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

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Natural Resources Conservation Service (NRCS or Agency) published an Interim Final Rule on June 25, 2008, amending its National Environmental Policy Act (NEPA) compliance regulations by clarifying the appropriate use of a program environmental assessment (EA) and by aligning its NEPA public involvement process with that of the Council on Environmental Quality's (CEQ) regulations that implement NEPA. Both changes would better align the Agency regulations with the CEQ NEPA regulations and provide for the efficient and timely environmental review of NRCS actions, particularly those actions where Congress has directed NRCS action within short time periods of 60–90 days. The Council on Environmental Quality, in accordance with their regulations, reviewed and approved the proposed changes on June 11, 2008. The comment period on the interim final rule closed on July 25, 2008. No comments were received on the interim final rule. Accordingly, NRCS is issuing this final rule to indicate that no comments were received and to announce that the interim rule is final without change.

DATES: Effective September 23, 2008, the interim final rule published on June 25, 2008 (73 FR 35883) is confirmed as final.

FOR FURTHER INFORMATION CONTACT: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, P.O. Box 2890, Room 6158–S, Washington, DC 20013; telephone (202) 720–4925; submit e-mail to: *matt.harrington@wdc.usda.gov,* Attention: Compliance with NEPA comments.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of the full Compliance with NEPA rule using the Internet through the NRCS homepage at *http://www.nrcs.usda.gov* and by selecting ''Programs,'' then ''National Environmental Policy Act (NEPA) Documents.''

Background

Synopsis of the Final Rule

The rule better aligns the NRCS' NEPA regulations with that of the CEQ's regulations that implement NEPA. The final rule amends 7 CFR 650.5(c) Figure 1 by inserting ''Program EA'' to the flow chart on NRCS decisionmaking and the rule adds a section to 7 CFR 650.8(a), which discusses the criteria for determining the need for a program EA. The rule also makes changes to 7 CFR 650.12 so that 650.12 better conforms to CEQ's similar regulations.

First, the rule amends 7 CFR 650.5(c) Figure 1 by inserting ''Program EA'' to the flow chart on NRCS decisionmaking and by adding a section to 7 CFR 650.8 discussing the criteria for determining the need for a program EA. Previously, Agency regulations did not address NRCS' ability to tier to Program EAs or clarify when it is appropriate to use a program environmental assessment. The change to Figure 1 explicitly confirms the State and field offices' ability to tier site-specific environmental reviews and decisionmaking to either a Program EA or Program EIS. The change to section 650.8 clearly states when it is appropriate to use an environmental assessment. This change aligns NRCS' NEPA regulations with 40 CFR 1507.3(b)(2), which states that Agency NEPA regulations should identify specific criteria for those classes of action which normally require an EA and those that require an EIS. For rulemaking actions under the Farm Bill, the Agency has prepared program EAs in the past because the limited significance of the actions did not warrant the preparation of an EIS. Therefore, this rule change provides for the efficient and timely environmental review of NRCS actions.

Second, NRCS is changing the current requirement of publication of the notice of availability for every EA/FNSI in the **Federal Register**. CEQ regulations require public involvement in preparing any EA/Finding of No Significant Impact (FNSI) and require a 30-day review period of the EA/FNSI only in the following limited circumstances: (a) The action is, or closely similar to, one which normally requires the preparation of an EIS, as defined by NRCS NEPA implementing regulations at 7 CFR 650.7, or (b) the nature of the action is one without precedent. The changes made in the NRCS final rule at 7 CFR 650.12 mirror that of CEQ's regulations. This change provides the Agency with the flexibility for all program actions to determine the most appropriate method of public involvement in preparing the EA/FNSI and the most appropriate method for publication of the notice of the availability of the EA/FNSI. As noted by CEQ regulations implementing NEPA (40 CFR 1506.6), actions primarily of local concern may be published in local newspapers and use other means to reach the interested and affected members of the public.

The final rule also allows the Agency to implement an action upon issuing the notice of availability of the EA/FNSI or at a specified time period after issuance of the notice based on the public involvement provided. For Agency actions with statutorily short rulemaking timeframes or for emergency actions, the ability to tailor public involvement and review allows the Agency to implement the action upon issuance of the notice of availability or a shorter timeframe thereafter, while still meeting the requirements of NEPA as well as its intent. This enables the Agency to prepare adequate NEPA analyses and to proceed with timely implementation for these important actions.

Regulatory Certifications

Executive Order 12866

The NRCS reviewed this final rule under U.S. Department of Agriculture (Department) procedures and Executive Order 12866 issued September 30, 1993 (E.O. 12866), as amended by E.O. 13422 on Regulatory Planning and Review. This final rule is issued in accordance with the E.O. 12866. It has been determined that this final rule is not significant and, therefore, it has not been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a

notice of final rulemaking with respect to the subject matter of this rule.

Environmental Analysis

The final rule amends the procedures for implementing the National Environmental Policy Act (NEPA) at 7 CFR Part 650 and would not directly impact the environment. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of Agency responsibilities under NEPA, but are not the Agency's final determination of what level of NEPA analysis is required for a particular action. The CEQ set forth the requirements for establishing Agency NEPA procedures in its regulations at 40 CFR 1505.1 and 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing Agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000).

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), NRCS has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted; (2) no retroactive effect would be given to this final rule; and (3) before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR Parts 614, 780, and 11 must be exhausted.

Federalism

NRCS has considered this final rule under the requirements of Executive Order 13132 issued August 4, 1999 (E.O. 13132), ''Federalism.'' The Agency has made an assessment that the final 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, nor on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this final rule does not have Federalism implications.

Energy Effects

This final rule has been reviewed under Executive Order 13211 issued May 18, 2001 (E.O. 13211), ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' NRCS has determined that this final rule does not constitute a significant energy action as defined in E.O. 13211.

For the reasons stated in the preamble, under the authority at 42 U.S.C. 4321 *et seq.*; Executive Order 11514 (Rev.); 7 CFR 2.62, the Natural Resources Conservation Service confirms the interim rule amending 7 CFR part 650 which published at 73 FR 35883 on June 25, 2008, is adopted as final without change.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E8–22090 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS–FV–08–0052; FV08–922–1 FR]

Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order begins April 1 and ends March 31. The assessment rate remains in effect indefinitely unless modified, suspended or terminated.

DATES: *Effective Date:* September 24, 2008.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; Telephone: (503) 326–2724; Fax: (503) 326–7440; or e-mail: *Robert.Curry@usda.gov* or *GaryD.Olson@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 922 (7 CFR 922), as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington apricots beginning April 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for Washington apricots handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of apricots in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of $1.50 per ton of apricots handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2008, and unanimously recommended 2008–09 expenditures of $7,093. In comparison, last year's budgeted expenditures were $6,743. In addition, the Committee recommended that the $1.50 per ton assessment rate approved for the 2007–08 and subsequent fiscal periods be increased by $0.50 to $2.00 per ton of apricots handled. The Washington apricot production area experienced freezing weather in April this year that was predicted to have a significant impact on apricot production. As a result, the Committee estimated a total fresh crop of only 3,650 tons for this season—significantly less than the 6,620 tons of fresh apricots reported to the Committee by industry handlers last season. Due to this anticipated shortfall, the Committee recommended that the assessment rate be increased by $0.50 to help ensure that budgeted expenses are adequately covered.

The major expenditures recommended by the Committee for the 2008–09 fiscal period include $4,800 for the management fee, $1,000 for Committee travel, $100 for compliance, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2007–08 fiscal period included $4,800 for the management fee, $1,000 for travel, $500 for the annual financial audit, $100 for compliance, and $343 for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of $7,093 by the projected 2008 3,650 ton apricot production. Applying the $2.00 per ton assessment rate to this crop estimate should provide $7,300 in assessment income. Although the 3,650 ton crop estimate reflects the Committee's best current assessment of the damage the late-season freezing temperatures may have had on production this season, Committee members expressed some concern that production could potentially end up even shorter. Because of the crop estimate uncertainty, the Committee felt that the $2.00 per ton assessment rate is warranted even though the projected fiscal year-end reserve balance at this time is $8,173. Although this amount is slightly higher than the recommended budget, the reserve would still be within the order's limit of approximately one fiscal period's operational expenses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of the Committee's meetings are available from the Committee or USDA. The Committee's meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committee's recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2008–09 budget has been reviewed and approved by USDA. Subsequent fiscal period budgets will also be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 300 apricot producers within the regulated production area and approximately 22 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

The Washington Agricultural Statistics Service has prepared a report showing that the total 7,000 ton apricot utilization sold for an average of $1,120 per ton in 2007 with a total farm-gate value of approximately $7,827,000. Based on the number of producers in the production area (300), the average annual producer revenue from the sale of apricots in 2007 can thus be estimated at approximately $26,090. In addition, based on information from the Committee and USDA's Market News Service, 2007 f.o.b. prices ranged from $18.00 to $20.00 per 24-pound loose-pack container, and from $20.00 to $22.00 for 2-layer tray-pack containers. Approximately 40 percent of the 2007 6,620 ton fresh pack-out was packed in 24-pound loose-pack containers while the remainder was packed in 2-layer tray-pack containers (weighing an average of about 20 pounds each). On the high end, this would have grossed the 22 apricot handlers approximately $13,151,700 in f.o.b. receipts for the 2007 crop—leaving average receipts for

each handler well below the SBA's $6,500,000 threshold for small businesses. Therefore, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2008–09 and subsequent fiscal periods from $1.50 to $2.00 per ton for apricots handled under the order's authority. The Committee also unanimously recommended 2008–09 expenditures of $7,093. With a 2008–09 Washington apricot crop estimate of 3,650 tons, the Committee anticipates assessment income of about $7,300. Due to the sharply smaller crop expected this season, the Committee recommended the assessment rate increase to help ensure that budgeted expenses are adequately covered.

Although there continues to be uncertainty this season regarding production totals due to the mid-spring freezing weather, income derived from handler assessments should adequately cover budgeted expenses. Because of the crop estimate uncertainty, the Committee felt the $2.00 per ton assessment rate is warranted even though the projected fiscal year-end reserve balance at this time is $8,173. Although this amount is slightly higher than the recommended budget, the reserve would still be within the order's limit of approximately one fiscal period's operational expenses.

The major expenditures recommended by the Committee for the 2008–09 fiscal period include $4,800 for the management fee, $1,000 for Committee travel, $100 for compliance, and $1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, major expenditures for the 2007–08 fiscal period included $4,800 for the management fee, $1,000 for travel, $500 for the annual financial audit, $100 for compliance, and $343 for equipment maintenance, insurance, bonds, and miscellaneous expenses.

The Committee discussed alternatives to this increase in the assessment rate. Leaving the assessment rate at $1.50 per ton was discussed, but not seriously considered since such a rate would not have earned adequate income and would have thus significantly depleted the Committee's reserves. Although a rate of assessment somewhat less than the recommended $2.00 per ton rate would have potentially covered the recommended expenses, the Committee chose the higher rate due to the uncertainty the members felt regarding the 3,650 ton crop estimate. The mid-April freeze experienced in the growing regions this year left doubt in some members minds that the final pack-out this season will even reach the 3,650 ton estimate.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2008–09 season could average about $1,000 per ton for fresh Washington apricots. Therefore, the estimated assessment revenue for the 2008–09 fiscal period as a percentage of total producer revenue is 0.2 percent for Washington apricots.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order.

In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on the issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Additionally, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 18, 2008 (73 FR 48156). Committee staff made copies of the proposed rule available to Committee members, handlers and other interested persons. The proposed rule was also made available through the Internet by USDA and the Office of the Federal Register. A 15 day comment period ending September 2, 2008, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and order may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared police of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2008–09 fiscal period began on April 1, 2008, and the order requires that the assessment rate for each fiscal period apply to all assessable apricots handled during such fiscal period; (2) the Washington apricot harvest and shipping season is currently under way; (3) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; (4) handlers are aware of this action, which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (5) a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2008, an assessment rate of $2.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: September 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–22146 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

RIN 3150–AI45

[NRC–2008–0412]

Adjustment of Civil Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes within the jurisdiction of the NRC. These changes were mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The NRC is amending its regulations to adjust the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended, (AEA) or any regulation or order issued under the AEA from $130,000 to $140,000 per violation per day. Further, the provisions concerning program fraud civil penalties are being amended by adjusting the maximum CMP under the Program Fraud Civil Remedies Act from $6,000 to $7,000 for each false claim or statement.

DATES: This rule is effective on October 23, 2008.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0412]. Address questions about NRC dockets to Carol Gallagher 301–415–5905; e-mail *Carol.Gallagher@nrc.gov*.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

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

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Procedural Background
IV. Voluntary Consensus Standard
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Congressional Review Act

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulations the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction became effective on November 26, 2004. (October 26, 2004; 69 FR 62393).

The inflation adjustment is to be determined by increasing the maximum CMPs by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June in the last calendar year in which the amount of the penalty was last adjusted. Applying this formula results in a 9.8 percent increase to the maximum CMPs for violations of the AEA. During the 2004 inflation adjustment, the CMPs for violations of the Program Fraud Civil Remedies Act remained unchanged. Therefore, for this update the percentage change to CMPs for violations of the Program Fraud Civil Remedies Act is the change in the CPI from June 2000 (the date it was last adjusted for inflation) until June 2007, which is a difference of 21 percent. In the case of penalties greater than $1,000, but less than or equal to $10,000, inflation adjustment increases are to be rounded to the nearest multiple of $1,000. Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the Atomic Energy Act to $100,000 per day per violation. In 1996, under the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to $110,000. The DCIA also amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, in 2000 the NRC adjusted the maximum CMPs to $120,000, and in 2004 the NRC adjusted the maximum CMPs to $130,000. The NRC is required to adjust the CMPS within its jurisdiction again this year. After this mandatory adjustment for inflation, the adjusted maximum CMP for a violation of the AEA or any regulation or order issued under the AEA will be $140,000 per day per violation (rounding the amount of the inflation adjustment increase, 9.8 percent, to the nearest multiple of $10,000). Thus, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of $140,000 per day per violation. The amended maximum CMP applies only to violations that occur after the effective date of this final rule.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 and 3802, and the NRC's implementing regulations, § 13.3(a)(1) and (b)(1) are currently limited to $6,000. In 2004, when the NRC last adjusted CMPs for inflation, these penalties did not meet the statutory criteria to be changed because the inflation increase was not large enough. The NRC must adjust CMPs for the change in inflation since the last time the CMPs were adjusted. For the Program Fraud Civil Remedies Act CMPs, this means the change in the CPI since 2000; that difference is 21 percent. When this change is applied to § 13.3(a)(1) and (b)(1) (and rounding to the nearest multiple of $1,000) the new penalty amount will be $7,000. Thus, the NRC is amending § 13.3(a)(1) and (b)(1) by increasing the maximum civil penalty for each false statement or claim under the Program Fraud Civil Remedies Act from $6,000 to $7,000. The amended CMP applies only to violations that occur after the effective date of this final rule.

The Commission has no discretion to set alternative levels of adjusted civil penalties because the amount of inflation adjustment must be calculated by a formula established by statute.

Conforming changes to the NRC Enforcement Policy (NUREG–1600) will be made as part of the overall revisions to the Enforcement Policy currently taking place. (January 25, 2007; 72 FR 3429).

III. Procedural Background

This final rule has been issued without prior public notice or opportunity for public comments. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. Congress has required the NRC to adjust the CMPs within NRC jurisdiction for inflation at least once every four years, and provided no discretion regarding the substance of the amendments. The NRC is required only to perform ministerial computations to determine the inflation adjustment to the CMPs.

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. There are no consensus standards that apply to the inflation adjustment requirements in this final rule. Thus, the provisions of the Act do not apply to this rulemaking.

V. Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

VI. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

This final rule adjusts for inflation the maximum civil penalties under the Atomic Energy Act of 1954, as amended, and under the Program Fraud Civil Remedies Act of 1986. The adjustments and the formula for determining the amount of the adjustment are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (Pub. L. 104–134, 110 Stat. 1321–358, 373, codified at 28 U.S.C. 2461 note). Congress passed that legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement or those licensees or persons subjected to liability under the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR Part 13).

VIII. Regulatory Flexibility Certification

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

IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provision which would impose a backfit under the backfit rule, §§ 50.109, 70.76, 72.62, 76.76; therefore, a backfit analysis need not be prepared.

X. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 2

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

10 CFR Part 13

Claims, Fraud, Organization and function (government agencies), Penalties.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13.

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

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

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

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

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Public Law 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Public Law 101–410, 104 Stat. 90, as amended by section 3100(s), Public Law 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Public Law 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section

2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712 also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Public Law 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Public Law 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154).

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

■ 2. In § 2.205, paragraph (j) is revised to read as follows:

§ 2.205 Civil penalties.

* * * * *

(j) *Amount.* A civil monetary penalty imposed under section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed $140,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purposes of computing the applicable civil penalty.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 3. The authority citation for part 13 continues to read as follows:

Authority: Public Law 99–509, sec. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 13.13(a) and (b) also issued under section Public Law 101–410, 104 Stat. 890, as amended by section 31001(s), Public Law 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 4. In § 13.3, paragraphs (a)(1)(iv) and (b)(1)(ii) are revised to read as follows:

§ 13.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $7,000 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $7,000 for each such statement.

* * * * *

Dated at Rockville, Maryland, this 4th day of September 2008.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E8–22172 Filed 9–22–08; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1231

RIN 2590–AA08

Golden Parachute Payments

AGENCY: Federal Housing Finance Agency.

ACTION: Correcting amendments.

SUMMARY: The Federal Housing Finance Agency has determined, insofar as it relates to indemnification payments, to rescind that portion of the Interim Final Rule, published in the **Federal Register** on September 16, 2008 (73 FR 53356). That portion of the rule will be subject to a separate rulemaking, which will be published for public comment in the near term. Insofar as the Interim Final Rule addresses factors related to golden parachute payments, that portion of the rule remains effective and available for comment. This document corrects specific provisions in the rule referring to indemnification payments.

DATES: *Effective Date:* September 23, 2008.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel (OFHEO), telephone (202) 414–3788; or Christopher Curtis, General Counsel (FHFB), telephone (202) 408–2802 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

Need for Correction

As published on September 16, 2008, and on September 19, 2008, the interim final regulation contained clerical and other errors, which these amendments correct.

List of Subjects in 12 CFR Part 1231

Golden parachutes, Government-sponsored enterprises.

■ Accordingly, part 1231 of Title 12 CFR Chapter XII is corrected by making the following correcting amendments:

PART 1231—GOLDEN PARACHUTE PAYMENTS

■ 1. The authority citation for part 1231 continues to read as follows:

Authority: 12 U.S.C. 4518(e).

■ 2. Section 1231.1 is revised to read as follows:

§ 1231.1 Purpose.

The purpose of this part is to implement section 1318(e) of the Act by setting forth the standards that the Director will take into consideration in determining whether to limit or prohibit golden parachute payments to entity-affiliated parties.

■ 3. Section 1231.5 is amended by revising the introductory text and paragraph (f) to read as follows:

§ 1231.5 Factors to be taken into account.

In determining whether to prohibit or limit any golden parachute payment, the Director shall consider the following factors—

* * * * *

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute payment, including but not limited to negligence, gross negligence, neglect, willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Dated: September 18, 2008.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–22260 Filed 9–19–08; 11:15 am]

BILLING CODE 8070–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AF78

Military Reservist Economic Injury Disaster Loans

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: SBA makes economic injury disaster loans to small businesses that have been adversely affected by specific events. If a small business has an essential employee or owner who is a member of a reserve component of the

Armed Forces, the Small Business Act authorizes SBA to provide Military Reservist Economic Injury Disaster Loan (MREIDL) assistance in the event that the essential employee or owner is called to active duty during a period of military conflict. Recent legislation authorized changes to make the program more accessible to affected small businesses by extending the application period, increasing the unsecured loan threshold, increasing the maximum loan limit and expediting processing of the application. This Direct Final Rule will implement these legislative changes.

DATES: This rule is effective on October 28, 2008 without further action, unless SBA receives a significant adverse comment by October 23, 2008. If SBA receives any significant adverse comments, the Agency will publish a timely withdrawal of the subject portion of this rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AF78, by any of the following methods: (1) *Federal Rulemaking Portal: http://www.regulations.gov,* following the specific instructions for submitting comments; (2) Fax (202) 481–2226; or e-mail: *Herbert.Mitchell@sba.gov;* or (3) Mail/Hand Delivery/Courier: Herbert L. Mitchell, Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Roger B. Garland, Office of Disaster Assistance, 202–205–6734 or *Roger.Garland@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA is amending Part 123 of Title 13 of the CFR to reflect the recent changes to the Small Business Act (Act) contained in Public Law 110–186, enacted on February 14, 2008 (Legislation), which broaden SBA's authority to make MREIDL assistance to otherwise eligible small businesses, and also Public Law 110–234, enacted on May 22, 2008, which increases the maximum MREIDL limit from $1.5 million to $2.0 million.

SBA's MREIDL financing is available to small businesses that have suffered substantial economic injury as a result of a declared disaster, or the call-up to active duty of an essential employee as a result of military conflict. A business incurs substantial economic injury if it is unable to meet its obligations as they mature or it is unable to pay its ordinary and necessary operating expenses. Neither loss of anticipated profits nor a drop in sales is considered to be substantial economic injury for MREIDL purposes.

To reflect changes made by the Legislation, SBA is adding a new second sentence in the introductory text of section 123.11 to reflect that for purposes of MREIDL, as described in section 123.513, SBA will generally not require that the business pledge collateral to secure a loan of $50,000 or less.

To reflect changes made by the Legislation, SBA is changing section 123.503 to reflect that a small business can apply for a MREIDL before the essential employee receives call-up orders. The business may apply from the date the essential employee receives a notice of expected call-up and ending one year (an increase from 90 days) after the employee is discharged or released from active duty. In addition, the section is amended to show that the Associate Administrator for Disaster Assistance (or designee) (AA/DA) may extend the one year limit for no more then one additional year after finding extraordinary or unforeseeable circumstances.

To reflect changes made by the Legislation, section 123.504(a) is amended to reflect that a MREIDL application shall include the essential employee's notice of expected call-up or official call-up orders.

To reflect changes made by the Legislation, section 123.511 is amended to add a sentence stating that funds will only be disbursed after the essential employee has been called to active duty.

SBA is adding a new section 123.513 to reflect the statutory change which provides that SBA will not generally require the business to pledge collateral to secure a MREIDL of $50,000 or less. For loans larger than $50,000, the business will be required to provide available collateral. The new section makes clear that SBA will not decline a loan if the business lacks a particular amount of collateral so long as SBA is reasonably sure that the business can repay the loan.

In addition, Public Law 110–234, effective May 22, 2008, increased the SBA MREIDL limit from $1.5 million to $2 million. SBA is amending sections 123.506 and 123.507 to reflect this statutory change.

SBA is also making a technical correction in section 123.3. There are five ways in which disaster declarations are made, and these are described in section 123.3. However, the first sentence of that section refers to four ways. SBA is correcting the first sentence in section 123.3 to state that there are five ways in which disaster declarations are made.

Consideration of Comments

This is a direct final rule and SBA will review all comments. SBA believes that this rule is routine and non-controversial since it implements changes required by statute, and SBA anticipates no significant adverse comments to this rulemaking. If SBA receives any significant adverse comments, it will publish a timely withdrawal of this direct final rule.

Compliance With Executive Orders 12866, 12988, 13132 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

The final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds (and incorporates the finding and brief statement of reasons in the rules issued) that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be impracticable given the emergency nature of the recent legislation authorizing the new requirements.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, the Small Business Administration amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245; and Pub. L. 110–186.

■ 2. Amend § 123.3(a) by revising the first sentence to read as follows:

§ 123.3 How are disaster declarations made?

(a) There are five ways in which disaster declarations are issued which make SBA disaster loans possible:

* * * * *

■ 3. Revise § 123.11, introductory text, to read as follows:

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of $10,000 or less, or an economic injury disaster loan of $5,000 or less. However, for the purposes of the Military Reservist EIDL only, as described in section 123.513, SBA will not generally require that you pledge collateral to secure a loan of $50,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

* * * * *

■ 4. Revise the heading of § 123.501 to read as follows:

§ 123.501 Under what circumstances is your business eligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

■ 5. Revise the heading of § 123.502 to read as follows:

§ 123.502 Under what circumstances is your business ineligible to be considered for a Military Reservist Economic Injury Disaster Loan?

* * * * *

■ 6. Revise § 123.503 to read as follows:

§ 123.503 When can you apply for a Military Reservist EIDL?

Your small business can apply for a Military Reservist EIDL any time beginning on the date your essential employee receives notice of expected call-up and ending one year after the date the essential employee is discharged or released from active duty. The Associate Administrator for Disaster Assistance (AA/DA) or designee may extend the one year limit by no more then one additional year after finding extraordinary or unforeseeable circumstances.

* * * * *

■ 7. Revise § 123.504(a) to read as follows:

§ 123.504 How do you apply for a Military Reservist EIDL?

* * * * *

(a) A copy of the essential employee's official call-up orders for active duty showing the date of call-up, and, if known, the date of release from active duty. For an essential employee who expects to be called up and who has not received official call-up orders, the application shall include the notice of the expected call-up including, if known, the expected date of call-up and expected date of release from active duty;

* * * * *

■ 8. Revise § 123.506 to read as follows:

§ 123.506 How much can you borrow under the Military Reservist EIDL Program?

You can borrow an amount equal to the substantial economic injury you have suffered or are likely to suffer until normal operations resume as a result of the absence of one or more essential employees called to active duty, up to a maximum of $2 million.

■ 9. Revise the heading of § 123.507, the introductory text and paragraph (b) to read as follows:

§ 123.507 Under what circumstances will SBA consider waiving the $2 million loan limit?

SBA will consider waiving the $2 million dollar limit if you can certify to the following conditions and SBA approves of such certification based on the information supplied in your application:

* * * * *

(b) Your small business is in imminent danger of going out of business as a result of one or more essential employees being called up to active duty during a period of military conflict, and a loan in excess of $2 million is necessary to reopen or keep open the small business; and

* * * * *

■ 10. Revise § 123.511 to read as follows:

§ 123.511 How will SBA disburse Military Reservist EIDL funds?

Funds will be disbursed only after the essential employee has been called to active duty, and you have provided a copy of the essential employee's official call-up orders for active duty showing the date of the call-up. SBA will disburse your funds in quarterly installments (unless otherwise specified in your loan authorization agreement) based on a continued need as demonstrated by comparative financial information. On or about 30 days before your scheduled fund disbursement, SBA will request ordinary and usual financial statements (including balance sheets and profit and loss statements). Based on this information, SBA will assess your continued need for disbursements under this program. Upon making such assessment, SBA will notify you of the status of future disbursements.

■ 11. Add § 123.513 to read as follows:

§ 123.513 Does SBA require collateral on its Military Reservist EIDL?

SBA will not generally require you to pledge collateral to secure a Military Reservist EIDL of $50,000 or less. For loans larger than $50,000, you will be required to provide available collateral such as a lien on business property, a security interest in personal property, or both. SBA will not decline a loan if you do not have a particular amount of collateral so long as SBA is reasonably sure that you can repay the loan. If you refuse to pledge the available collateral when requested by SBA, however, SBA may decline or cancel your loan.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–21995 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE287, Special Conditions No. 23–227–SC]

Special Conditions; Honda Aircraft Company, Model HA–420 HondaJet Airplane; Fire Extinguishing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This notice issues special conditions for the Honda Aircraft

Company, Model HA–420 HondaJet Airplane. This new airplane will have novel and unusual design features not typically associated with normal, utility, acrobatic, and commuter category airplanes. These design features include turbofan engines and engine location, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* September 15, 2008.

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 301, 901 Locust Street, Kansas City, Missouri 64106; telephone (816) 329–4134, e-mail: *leslie.b.taylor@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2006, Honda Aircraft Company, Greensboro, North Carolina, made an application to the FAA for a new Type Certificate for the Honda Model HA–420 HondaJet. The Honda Model HA–420 HondaJet is an all new very light jet, twin engine, high performance, low wing, aft overwing mounted turbofan engine powered aircraft in the normal category including flight into known icing conditions, Reduced Vertical Separation Minima (RVSM) and single pilot operations. The Model HA–420 HondaJet design criteria includes: 9963 pounds maximum gross weight, estimated maximum speed of 258 KIAS/0.72 Mach, cruise speed of 420 KTAS at 30,000 feet, and a 43,000 foot maximum altitude.

Part 23 has historically addressed fire protection through prevention, identification, and containment. Prevention has been provided through minimizing the potential for ignition of flammable fluids and vapors. Identification has traditionally been provided by the location of the engines within the pilot's primary field of view and/or with the incorporation of fire detection systems. This philosophy has provided for both the rapid detection of a fire and confirmation when it has been extinguished. Containment has been provided through the isolation of designated fire zones through flammable fluid shutoff valves and firewalls. The containment philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of the engine. However, containment has only been required to be demonstrated for 15 minutes. In event of a fire in a traditional part 23 airplane, the corrective action is to land as soon as possible. For a small, simple aircraft originally envisioned by part 23, it is possible to descend the aircraft to a suitable landing site within 15 minutes. Thus, if the fire is not extinguished, the occupants can safely exit the aircraft before the firewall is breached. These simple and traditional aircraft normally have the engine located away from critical flight control systems and primary structure. This has ensured that, throughout the fire event, the pilot can continue safe flight and control. It has also made predicting the effects of a fire relatively easy. Other design features of these simple and traditional aircraft, such as low stall speeds and short landing distances, ensure that, even in the event of an off-field landing, the potential for a catastrophic outcome has been minimized.

The certification basis for the Model HA–420 HondaJet does require that a fire detection system be installed. However, due to the engine location, fire extinguishing is also considered a requirement. A sustained fire could result in loss of control of the airplane and damage to the primary structure before an emergency landing could be made.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, Honda Aircraft Company must show that the Model HA–420 HondaJet meets the applicable provisions of 14 CFR, part 23, effective February 1, 1965, as amended by Amendments 23–1 through Amendment 23–55, effective March 1, 2002; 14 CFR, part 36, effective December 1, 1969, through the amendment effective on the date of type certification; 14 CFR, part 34; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17.

Novel or Unusual Design Features

The Honda Aircraft Company, Model HA–420 HondaJet will incorporate the following novel or unusual design features:

Engine Fire Extinguishing System

The Model HA–420 HondaJet design includes engines mounted aft on the top of the wings; therefore, early visual detection of engine fires is precluded. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted engine installations were not envisaged in the development of part 23; therefore, special conditions for a fire extinguishing system with the applicable agents, containers, and materials for the engines of the Model HA–420 HondaJet are appropriate.

Discussion of Comments

A notice of proposed special conditions, Notice No. 23–08–04–SC, for the Model HA–420 HondaJet was published on June 25, 2008 (73 FR 35979). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model HA–420 HondaJet. Should Honda Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane identified.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these Special Conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Final Special Conditions

Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for the Honda Aircraft Company, Model HA–420 HondaJet airplane:

SC 23.1195, Fire extinguishing systems—Add the requirements of 14 CFR § 23.1195 as modified below while deleting, ''For commuter category airplanes.''

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual ''one shot'' system may be used except for embedded engines where a ''two-shot'' system is required.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) If an auxiliary power unit is installed in any airplane certificated to this part, that auxiliary power unit compartment must be served by a fire extinguishing system meeting the requirements of paragraph (a)(2) of this section.

SC 23.1197, Fire extinguishing agents—Add the requirement of 14 CFR § 23.1197 while deleting, ''For commuter category airplanes.''

(a) Fire extinguishing agents must:

(1) Be capable of extinguishing flames emanating from any burning fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which:

(1) Five pounds or less of carbon dioxide will be discharged, under established fire control procedures, into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight crewmember on flight deck duty.

SC 23.1199, Extinguishing agent containers—Add the requirements of 14 CFR § 23.1199 while deleting, ''For commuter category airplanes.''

(a) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from—

(1) Falling below that necessary to provide an adequate rate of discharge, or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

SC 23.1201, Fire extinguishing systems materials—Add the requirements of § 23.1201 while deleting, ''For commuter category airplanes.''

Fire extinguisher system materials must meet the following requirements:

(a) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on September 15, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22154 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0461; Directorate Identifier 2008–NE–14–AD; Amendment 39–15678; AD 2008–19–11]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arrius 2B1, 2B1A, 2B2, and 2K1 Turboshaft Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) provided by the European Aviation Safety Agency (EASA) to identify and correct an unsafe condition on Turbomeca S.A. Arrius 2B1, 2B1A, 2B2, and 2K1 turboshaft engines. The MCAI describes the unsafe condition as:

A short circuit of some tantalum capacitors inside certain electronic control (EEC) units may lead to an in-flight shutdown on one of the two engines resulting from:

—Direct activation of the overspeed electronic protection;
—Non-direct activation of the electronic overspeed protection by lowering the threshold,
—Spurious activation of the starting sequence; or
—Loss of power control with no freeze of the fuel-metering valve.

We are issuing this AD to prevent in-flight engine shutdowns and possible forced autorotation landing or accident.

DATES: This AD becomes effective October 8, 2008.

The Director of the Federal Register approved the incorporation by reference of Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006, listed in the AD as of October 8, 2008.

We must receive comments on this AD by October 23, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
• *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2008–0018, dated January 24, 2008, to correct an unsafe condition for the specified products. The EASA AD states:

> A short circuit of some tantalum capacitors inside certain electronic control (EEC) units may lead to an in-flight shutdown on one of the two engines resulting from:
> —Direct activation of the overspeed electronic protection;
> —Non-direct activation of the electronic overspeed protection by lowering the threshold,
> —Spurious activation of the starting sequence; or
> —Loss of power control with no freeze of the fuel-metering valve.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI AD and service information referenced above. We are issuing this AD because we evaluated all the information provided by the EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires identifying, and replacing or modifying affected EEC units that have tantalum capacitors installed that could have become brittle during their acceptance test.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time requirement of within the next 100 flight hours or 2 months, whichever occurs first. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0461; Directorate Identifier 2008–NE–14–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–19–11 Turbomeca S.A.: Amendment 39–15678; Docket No. FAA–2008–0461; Directorate Identifier 2008–NE–14–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Arrius 2B1, 2B1A, 2B2, and 2K1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter Deutschland GmbH EC135, and Agusta S.p.A. A109E helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2008–0018, dated January 24, 2008, states:

A short circuit of some tantalum capacitors inside certain electronic control (EEC) units may lead to an in-flight shutdown on one of the two engines resulting from:

—Direct activation of the overspeed electronic protection;
—Non-direct activation of the electronic overspeed protection by lowering the threshold;
—Spurious activation of the starting sequence; or
—Loss of power control with no freeze of the fuel-metering valve.

This AD requires identifying, and replacing or modifying affected EEC units that have tantalum capacitors installed that could have become brittle during their acceptance test. We are issuing this AD to prevent in-flight engine shutdowns and possible forced autorotation landing or accident.

Actions and Compliance

(e) Unless already done, within the next 100 flight hours or 2 months, whichever occurs first after the effective date of this AD, do the following actions:

(1) Identify the EEC units as listed in Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006; and

(2) For affected EECs, modify or replace the EEC units using the instructions of Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006.

(3) After the effective date of this AD, do not install an EEC with a serial number listed in Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006 on any helicopter, unless it has been modified using the instructions of Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006.

FAA AD Differences

(f) This AD requires modification or replacement of both EECs if both EECs are affected on the same helicopter, whereas MCAI EASA AD 2008–0018, dated January 24, 2008, requires modification of at least one EEC, if both EECs are affected, and modification or replacement of the remaining EEC, within 300 flight hours or 12 months, whichever occurs first.

(g) This AD immediately prohibits installation of any EECs that are affected, whereas MCAI EASA AD 2008–0018, dated January 24, 2008, prohibits installation of those EECs after February 7, 2009.

(h) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI EASA AD 2008–0018, dated January 24, 2008 for related information.

(j) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use Turbomeca S.A. Mandatory Service Bulletin No. 319 73 2835, Update No. 1, dated December 21, 2006, to do the actions required by this AD.

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

(m) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

(n) You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on September 11, 2008.

Peter A. White,

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

[FR Doc. E8–21834 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–074–FOR; Docket No. OSM–2008–0015]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). At its own initiative, Alabama proposed revisions to its regulations regarding permit fees and civil penalties to improve operational efficiency.

DATES: *Effective Date:* September 23, 2008.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the May 20, 1982, **Federal Register** (47 FR 22030). You can find later actions on the Alabama program at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By letter dated July 18, 2008 (Administrative Record No. AL–0658), and at its own initiative, Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment also included changes to its regulations regarding permit fees and civil penalties.

We announced receipt of the proposed amendment in the August 8, 2008, **Federal Register** (73 FR 46213). In the same document, we opened the

public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on September 8, 2008. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment to the Alabama Surface Mining Commission (ASMC) regulations as described below.

A. ASMC 880–X–8B–.07. Permit Fees

Alabama stated that its permit fees have remained unchanged for 26 years while the costs of reviewing, administering, and enforcing permits have increased substantially over this time. As a result, Alabama proposed to revise its regulations at ASMC 880–X–8B–.07 by:

(1) Increasing the acreage fee from $25 to $35 per acre for each acre in a permit,

(2) Requiring an acreage fee on all ''bonded'' acreage covered in a permit renewal instead of on ''all'' acreage in a permit renewal, and

(3) Increasing the basic fees for the following types of applications:

(a) Permit application—the fee increases from $2500 to $5000,

(b) Coal exploration application—the fee increases from $1000 to $2000,

(c) Permit renewal—the fee increases from $500 to $1000,

(d) Permit transfer—the fee increases from $100 to $200,

(e) Permit revision involving only an incidental boundary revision—the fee increases from $250 to $500,

(f) Permit revision involving an insignificant alteration to the mining and reclamation plan—the fee increases from $750 to $1500, and

(g) Permit revision involving a significant alteration to the mining and reclamation plan—the fee increases from $1500 to $3000.

The Federal regulations at 30 CFR 777.17, concerning permit fees, provide that applications for surface coal mining permits must be accompanied by a fee determined by the regulatory authority. The Federal regulations also provide that the fees may be less than, but not more than the actual or anticipated cost of reviewing, administering, and enforcing the permit. In its letter dated July 18, 2008 (Administrative Record No. AL–0658), Alabama advised us that the increase in the permit fees will not exceed the actual or anticipated costs of reviewing, administering, and enforcing the permit.

We find that Alabama's proposed permit fees are reasonable and are consistent with the discretionary authority provided by the Federal regulations at 30 CFR 777.17. Therefore, we are approving them.

B. ASMC 880–X–11D–.06. Determination of Amount of Penalty

To help offset increased costs of agency operations, Alabama proposed to increase the dollar amounts of its civil penalties. The current penalties begin with $20 and increase to a maximum penalty of $5,000. The revised penalties begin with $150 and increase to a maximum penalty of $5,000.

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are ''no less stringent than'' those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and that they be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing civil monetary penalties (CMPs), the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Instead, section 518(i) of the Act requires only the incorporation of penalties and procedures explained in section 518. The system proposed by the State must incorporate the four criteria of section 518(a) of SMCRA: (1) History of previous violations, (2) seriousness of the violation, (3) negligence of the permittee, and (4) good faith of the permittee in attempting to achieve compliance. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980 (45 FR 51548) by suspending the requirement that penalties shall be consistent with 30 CFR part 845. Consequently, we cannot require that the CMP provisions contained in a State's regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15.

We are approving Alabama's revised penalties because when determining the amount of the civil penalty, ASMC 880–X–11D uses the four criteria specified in the Federal statute at section 518(a).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On August 12 and 21, 2008, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0658–01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On date, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. AL–0658–01). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 12, 2008, we requested comments on Alabama's amendment (Administrative Record No. AL–0658–01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on July 18, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process.

SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Alabama program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Alabama program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 2008.

Alfred E. Whitehouse,

Acting Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding a new entry in

chronological order by ''Date of final publication'' to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 18, 2008	September 23, 2008	ASMC 880–X–8B–.07 and 880–X–11D–.06.

[FR Doc. E8–22171 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0896]

Drawbridge Operation Regulation; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Nassau County, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Loop Parkway Bridge, mile 0.7, across Long Creek, Nassau County, New York. Under this temporary deviation the bridge may remain in the closed position for three hours on two days to facilitate bridge maintenance.

DATES: This deviation is effective from 8:20 a.m. on September 22, 2008 through 11:20 a.m. on September 30, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0896 and are available online at *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 First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Loop Parkway Bridge, across Long Creek at mile 0.7, at Nassau County, New York, has a vertical clearance in the closed position of 21 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(f).

The waterway has seasonal recreational vessels and fishing vessels of various sizes. The facilities were notified regarding this closure and no objections were received.

The owner of the bridge, New York State Department of Transportation, requested a temporary deviation to facilitate electrical maintenance at the bridge.

Under this temporary deviation the Loop Parkway Bridge at mile 0.7, across Long Creek, may remain in the closed position between 8:20 a.m. and 11:20 a.m. on September 22, 2008 and September 23, 2008. In the event of inclement weather the alternate rain dates are September 29, 2008 and September 30, 2008. Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 11, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–22156 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0320]

RIN 1625–AA00

Safety Zone; IJSBA World Finals; Colorado River, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Lake Havasu on the lower Colorado River in support of the IJSBA World Finals. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6 a.m. on October 4, 2008, until 6 p.m. on October 12, 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–2008–0320 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 U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer Kristen Beer, USCG, Waterways Management, U.S.

Coast Guard Sector San Diego at (619) 278–7233. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2008, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; IJSBA World Finals; Colorado River, Lake Havasu City, Arizona in the **Federal Register** (73 FR 33030). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The International Jet Sports Boating Association is sponsoring the IJSBA World Finals on Lake Havasu. The event is a circle race consisting of 300–500 personal water craft up to 12 feet in length. The sponsor will provide four to five perimeter patrol and safety boats for this event. This safety zone is necessary to protect human safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway. This safety zone will protect human safety by limiting public access to the area.

Discussion of Comments and Changes

There are no changes from the preceding NPRM since there were no comments made during the allowed period.

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 temporary final rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Specifically, the size and location of the safety zone are limited and as such both commercial and recreational will be permitted to transit around the zone during the enforcement periods.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the region of Lake Havasu on the lower Colorado River from 6 a.m. to 6 p.m. from October 4, 2008 through October 12, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic may pass safely around the safety zone. Before the effective period, we will publish a local notice to mariners (LNM) and will issue a broadcast notice to mariners (BNM) alerts via marine channel 16 VFH before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the 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 will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, 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 a § 165.T11–035 to read as follows:

§ 165.T11–035 Safety zone; IJSBA World Finals; Colorado River, Lake Havasu City, AZ.

(a) *Location.* The limits of the proposed safety zone are as follows: the London Bridge channel at 34°28.49 N, 114°21.33 W, then northwest to 34°28.52 N, 114°21.46 W, then southwest to 34°28.44 N, 114°21.73 W, then south to 34°28.30 N, 114°21.69 W, and finally following the shoreline east and north to 34°28.49 N, 114°21.33 W.

(b) *Enforcement Period.* This section will be enforced daily from 6 a.m. to 6 p.m., October 4, 2008 through October 12, 2008. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

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

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

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

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

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

Dated: September 11, 2008.

T.H. Farris,

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

[FR Doc. E8–22239 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0914]

RIN 1625–AA00

Safety Zone; Milwaukee River Challenge, Milwaukee River, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Milwaukee River, Milwaukee, WI. This zone is intended to restrict vessels from a portion of the Milwaukee River during the Milwaukee River Challenge on September 20, 2008. This temporary safety zone will establish restrictions upon, and control the movement of, vessels in a specified area immediately prior to, during, and immediately after the regatta.

DATES: This regulation is effective from 9 a.m. to 5 p.m. on September 20, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0914 and are available online at *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 U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Eric Vogel, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. 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 Procedures Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the regatta on the date and times this rule will be in effect and delay would be contrary to the public interest. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary zone is necessary to ensure the safety of vessels and participants from the hazards associated with the operation of rowing race boats in a confined waterway. Based on the potential vessel traffic and the presence of small rowing vessels the Captain of the Port Lake Michigan has determined that racing rowing boats in presence of normal vessel traffic poses a significant risk to public safety and property. The likely combination of rowing vessels operating near large towing vessels and recreational vessels operating at high speeds could result in collisions that may cause serious injuries or fatalities. Establishing a safety zone to control vessel movement in the location of the race course will help ensure the safety of persons and property at this event and help minimize the associated risk.

Discussion of Rule

A temporary safety zone is necessary to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Milwaukee River Challenge. This proposed rule will establish restrictions upon and control the movement of vessels through a portion of the Milwaukee River immediately prior to, during, and immediately after the Milwaukee River Challenge.

The Captain of the Port will cause notice of enforcement of the regulation established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the regulation is terminated.

Regulatory Analyses

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

Regulatory Planning and Review

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

This expectation is based on the minimal time that vessels will be restricted from the zone in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Milwaukee River between 9 a.m. to 5 p.m. on September 20, 2008.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only eight hours on September 20, 2008. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the 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 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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedure; and related management system 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 Check List'' and ''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, 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. A new temporary § 165.T09–0914 is added as follows:

§ 165.T09–0914 Safety zone; Milwaukee River Challenge, Milwaukee River, Milwaukee, WI.

(a) *Location.* The following area is a temporary safety zone: All waters of the Milwaukee River from the junction with the Menomonee River at position 43°01′55″ N, 087°54′40″ W to the Humboldt Avenue Bridge at position 43°03′25″ N, 087°53′53″ W. All waters of the Menomonee River from the Twenty-fifth St. Bridge at position 43°01′58″ N, 087°56′41″ W to the junction with the Milwaukee River. (DATUM: NAD 83).

(b) *Effective period.* This regulation is effective from 9 a.m. to 5 p.m. on September 20, 2008.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: August 27, 2008.

B.C. Jones,

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

[FR Doc. E8–22128 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0860]

RIN 1625–AA00

Safety Zone; Neptune Festival, Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the Atlantic Ocean in the vicinity of the 14th Street Fishing Pier, Virginia Beach, Virginia, in support of the Neptune Festival Fireworks event. This action is intended to protect mariners from the hazards associated with fireworks displays by restricting vessel traffic movement in the vicinity of the event.

DATES: This rule is effective from 9 p.m. until 10 p.m. on September 27, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0860 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying in 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 Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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 any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property during the fireworks display. Additionally, this temporary safety zone will only be enforced for one hour on September 27, 2008 and should have minimal impact on vessel transits because vessels may safely transit through the zone when authorized by the Captain of the Port or his Representative or they may transit around the safety zone. For the same reasons above, 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**.

Background and Purpose

On September 27, 2008, Zambelli International will sponsor a fireworks display on the Atlantic Ocean shoreline centered on position 36°50′36″ N/75°58′12″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone in the vicinity of Virginia Beach, VA on September 27, 2008. The center of the safety zone is 36°50′36″ N/75°58′12″ W (NAD 1983), and such safety zone will extend 420 feet in all directions from that point. In the interest of public safety, access to the safety zone will be restricted from 9 p.m. to 10 p.m. on September 27, 2008. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the safety zone.

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. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor within the specified safety zone during the enforcement period.

The safety zone will not have a significant economic impact on a substantial number of small entities because the zone will only be enforced for a limited time and is of limited size. Additionally, vessel traffic can pass safely around the zone. Before the effective period, maritime advisories will be issued and made widely available to waterway users.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' will be 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, 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 temporary § 165.T05–0860, to read as follows:

§ 165.T05–0860 Safety Zone: Neptune Festival Fireworks Event, Atlantic Ocean, Virginia Beach, VA.

(a) *Regulated Area*. The following area is a safety zone: All navigable waters from position 36°50′36″ N/75°58′12″ W (NAD 1983) and extending out 420 feet from that point in the vicinity of 14th Street Fishing Pier, Virginia Beach, Virginia.

(b) *Definitions*. As used in this section, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Hampton Roads, Virginia to act on his behalf.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65Mhz) and channel 16 (156.8Mhz).

(d) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement Period*. This rule is enforced on September 27, 2008 from 9 p.m. to 10 p.m.

Dated: September 2, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E8–22237 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–0157]

RIN 1625–AA87

Security Zone; Escorted Vessels, Savannah, GA, Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting a security zone interim rule published in July 2008 as a final rule. This rule creates a security zone around any vessel escorted by one or more Coast Guard, State, or local law enforcement assets on the navigable waters of the Captain of the Port (COTP) Zone, Savannah, Georgia. This action is necessary to protect personnel, vessels, and facilities from sabotage or other subversive acts, accidents, or other events of a similar nature. No vessel or person will be allowed in this zone unless authorized by the Captain of the Port or a designated representative.

DATES: Effective October 23, 2008, the interim rule amending 33 CFR part 165 which was published at 73 FR 37835 on July 2, 2008, is adopted without change as a final rule.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2007–0157 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Marine Safety Unit Savannah, 100 West Oglethorpe Avenue, Suite 1017, Savannah, GA 31401 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Jeanita Jefferson, U.S. Coast Guard Marine Safety Unit Savannah at (912) 652–4353. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 2, 2008, we published an interim rule with request for comments entitled ''Security Zone; Escorted Vessels, Savannah, GA, Captain of the Port Zone'' in the **Federal Register** (73 FR 37835). We did not receive any letters commenting on the interim rule. No public meeting was requested, and none was held.

Background and Purpose

The terrorist attacks of September 2001 heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts, or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13,273, 67 FR 56215, Sept. 3, 2002 and 72 FR 54205, Sept. 21, 2007). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely.

The Captain of the Port (COTP) Zone Savannah, Georgia frequently receives vessels that require additional security, including, but not limited to, vessels carrying sensitive Department of Defense cargoes, vessels carrying dangerous cargoes, and foreign naval vessels. The Captain of the Port has determined that these vessels have a significant vulnerability to subversive activity by other vessels or persons, or, in some cases, themselves pose a risk to a port and the public within the COTP Zone, as described in 33 CFR 3.35–30. The COTP sought comments on the interim rule published July 2, 2008 (73 FR 37835) which enabled the COTP Savannah to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zone rules for each escorted vessel. As noted, we did not receive any comment on this interim rule.

Discussion of Rule

The COTP is adopting the currently-effective interim rule reflected in 33 CFR 165.749 as a final rule. This rule establishes a security zone that prohibits persons and vessels from coming within 300 yards of all escorted vessels within the navigable waters of the COTP Zone Savannah, Georgia unless authorized by the Coast Guard COTP Savannah, or the COTP's designated representative.

The navigable waterways included in this rule are the Port of Savannah and the Port of Brunswick in Georgia. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed and must comply with all orders issued by the COTP or a designated representative. Those vessels granted permission to enter the 300 yard security zone may not come within 50 yards of any escorted vessel. An escorted vessel will be defined as a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia as listed below:

- Coast Guard surface or air asset displaying the Coast Guard insignia.
- State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency.
- When escorted vessels are moored, dayboards or other visual indications such as lights or buoys may be used.

In all cases, broadcast notice to mariners will be issued to advise mariners of these restrictions.

Regulatory Analyses

We adopted the interim rule as final 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 so that a full Regulatory Evaluation is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Ports of Savannah and Brunswick, Georgia.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the vicinity of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones will not significantly impact commercial and passenger vessel traffic patterns, and mariners will be notified of the zones via Broadcast Notice to Mariners. Where such space is not available and security conditions permit, the Captain of the Port will attempt to provide flexibility for individual vessels to transit through the zones as needed.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ For the reasons discussed in the preamble, under authority of 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, the interim rule amending 33 CFR part 165 that was published at 73 FR 37835 on July 2, 2008, is adopted as a final rule without change.

Dated: September 9, 2008.

Lonnie P. Harrison, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. E8–22138 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN05

Presumption of Service Connection for Amyotrophic Lateral Sclerosis

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to establish a presumption of service connection for amyotrophic lateral sclerosis (ALS) for any veteran who develops the disease at any time after separation from service. This amendment is necessary to implement a decision by the Secretary to establish such a presumption based primarily on a November 2006 report by the National Academy of Sciences Institute of Medicine (IOM) on the association between active service and ALS.

DATES: *Effective Date:* This interim final rule is effective September 23, 2008. Comments must be received on or before November 24, 2008.

Applicability Date: The provisions of this interim final rule shall apply to all applications for benefits that are received by VA on or after the effective date of this interim final rule or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on the effective date of this interim final rule. In accordance with 38 U.S.C. 5110(g), the effective date of benefits awarded pursuant to this rule will be assigned in accordance with the facts found, but cannot be earlier than the effective date of this rule or the date one year prior to the date of application, whichever is later.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov,* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20042; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN05—Presumption of Service Connection for Amyotrophic Lateral Sclerosis.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4923 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rhonda Ford, Chief, Regulation Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9739.

SUPPLEMENTARY INFORMATION: This interim final rule establishes a presumption of service connection for ALS for any veteran who develops the disease at any time after separation from service. ALS (also called Lou Gehrig's disease) is a neuromuscular disease that affects about 20,000 to 30,000 people of all races and ethnic backgrounds in the United States and is often relentlessly progressive and almost always fatal. ALS causes degeneration of nerve cells in the brain and spinal cord that leads to muscle weakness, muscle atrophy, and spontaneous muscle activity. People suffering from ALS eventually lose the ability to move their arms and legs and to speak and swallow. The median survival period for people with ALS is 3 years from the onset of symptoms, and most people with ALS die from respiratory failure within 5 years. Currently, there is no effective treatment for ALS.

In November 2006, IOM issued the report *Amyotrophic Lateral Sclerosis in Veterans: Review of the Scientific Literature,* which concluded that ''there is limited and suggestive evidence of an association between military service and later development of ALS.'' The report summarized the findings of a 2005 ''high-quality cohort study'' by M.G. Weisskopf *et al.,* entitled *Prospective study of military service and mortality from ALS,* 64(1) Neurology 32 (2005), which evaluated ALS risk among veterans with service prior to 1982, including veterans of service during World War II, the Korean War, and the Vietnam War, and concluded that these veterans, regardless of years of service, were at a statistically significant greater risk of developing ALS compared to civilians. The IOM report concluded that ''[a]lthough the study has some limitations * * * overall it was a well-designed and well-conducted study'' that ''adequately controlled for confounding factors (age, cigarette use, alcohol consumption, education, self-reported exposure to pesticides and herbicides, and several main lifetime occupations).''

The IOM report also noted that other studies corroborated the findings of the Weisskopf study, including 2003 studies by R.D. Horner *et al.* (*Occurrence of amyotrophic lateral sclerosis among Gulf War veterans,* 61(6) Neurology 742 (2003)) and R.W. Haley (*Excess incidence of ALS in young Gulf War veterans,* 61(6) Neurology 750 (2003)), which suggested that veterans of the 1991 Gulf War were at greater risk of developing ALS than civilians. IOM characterized the Horner study as ''generally well conducted.'' In December 2001, based on pre-publication announcements of these 2003 studies, Secretary of Veterans Affairs Anthony J. Principi made a policy decision to give special consideration to ALS claims by veterans of the 1991 Gulf War regardless of when the disease became manifest. The findings of the Weisskopf study, however, suggest that military service in general, and not just circumstances specific to the 1991 Gulf War, is related to the development of ALS.

The cause of ALS is unknown, but these studies indicate that there exists a statistical correlation between activities in military service and development of ALS. Although the IOM report suggested that further studies may establish a more definite association between ALS and military service, the Secretary believes it is unlikely that conclusive evidence will be developed in the foreseeable future to establish the cause of ALS among military or civilian populations due to the rarity of this particular disease. After careful consideration of the studies referenced above and the fact that further research is unlikely to clarify this association between ALS and military service, the Secretary believes there is sufficient

evidence indicating a correlation between ALS and activities in military service that supports establishment of a presumption of service connection for ALS for any veteran with that diagnosis.

Accordingly, the Secretary has decided to establish this presumption for ALS under his general rulemaking authority. Section 501(a)(1) of title 38, United States Code, provides that ''[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws, including * * * regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws.'' This authority is broad enough to encompass establishment of an evidentiary presumption of service connection under specified circumstances. In this case, the Secretary has determined that proof of active military, naval, or air service and the subsequent development of ALS is sufficient evidence to support a presumption that the resulting disability was incurred in the line of duty during active military, naval, or air service, i.e., to establish entitlement to service connection. See 38 U.S.C. 1110.

Several circumstances unique to ALS warrant the establishment of a presumption of service connection for purposes of VA benefits. ALS is distinguishable from most other serious diseases because of its incurably debilitating, rapidly progressing, and invariably fatal characteristics. Most significantly, however, ALS is set apart from other diseases for purposes of establishing a presumption of service connection due to its statistically high development rate in veterans compared to the general population. Despite the high correlation with military service noted in the IOM report, the continuing uncertainty regarding specific precipitating factors or events that lead to development of the disease would present great difficulty for individual claimants seeking to establish service connection by direct evidence under generally applicable procedures in the absence of a presumption. This difficulty would be particularly profound in view of the rapid and devastating course of ALS and its impact on veterans and their families, which may inhibit their ability to participate in the development of evidence to support medically complex claims. Accordingly, the Secretary has determined that a presumption of service connection is warranted based on the available scientific and medical evidence and the unique circumstances surrounding ALS.

VA would welcome comments on any relevant peer-reviewed literature concerning ALS that has been published since the November 2006 IOM report. VA will continue to monitor developments in the scientific and medical fields concerning ALS. If, in the future, developments in the scientific and medical fields sufficiently establish that ALS is not associated with activities in military service, VA would revisit at that time the appropriateness of this presumption.

This interim final rule establishes a new § 3.318 to provide that the development of ALS at any time after discharge or release from active military, naval, or air service is sufficient to establish service connection for that disease. Paragraph (b) of new § 3.318 provides that this presumption of service connection for ALS does not apply if there is affirmative evidence that ALS was not incurred during or aggravated by such service or affirmative evidence that ALS was caused by the veteran's own willful misconduct. We recognize that there is very little likelihood that either of those standards will be met with regard to any particular claim, but we believe these provisions properly reflect Congress' intent, as expressed in 38 U.S.C. 1113, that evidentiary presumptions of service connection should not operate when there is affirmative evidence to the contrary or evidence of willful misconduct.

Paragraph (b) of new § 3.318 also provides that a presumption of service connection for ALS does not apply if the veteran did not have active, continuous service of 90 days or more. Although the Weisskopf study relied upon by the IOM report concluded that veterans have an increased risk of developing ALS compared to civilians regardless of years of service, a minimum-service requirement of 90 days would not be inconsistent with the study's findings because the study focused on veterans' ''years'' of service and did not consider minimum periods of service. We believe that 90 days is a reasonable period to ensure that an individual has had sufficient contact with activities in military service to encounter any hazards that may contribute to development of ALS. Under 38 U.S.C. 1112(a) and 38 CFR 3.307(a)(1), the presumptions of service incurrence for various conditions, such as chronic diseases and tropical diseases, apply generally to eligible veterans with at least 90 days of active, continuous service. Thus, Congress considered 90 days to be the minimum period necessary to support an association between such service and subsequent development of disease. Consistent with that judgment, we believe that, for any shorter period, it is more likely than not that ALS was not associated with service.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. This interim final rule is necessary to implement immediately the Secretary's decision to establish a presumption of service connection for ALS for veterans with that diagnosis. Delay in the implementation of this presumption would be contrary to the public interest.

Because the survival period for persons suffering from ALS is generally 5 years or less from the onset of symptoms, any delay would be extremely detrimental to veterans who are currently afflicted with ALS. Veterans with ALS may not be taking alleviating medications, participating in muscle and speech therapy, or receiving proper assistance for daily functions due to financial hardship or their lack of having service-connected status for their disability. Moreover, in all likelihood, some veterans will die from this rapidly progressive disease during a period for prior public comment. These veterans obviously would not receive any benefit from a presumption that is implemented after a public-comment period.

In order to benefit veterans currently suffering from ALS as quickly as possible, it is critical that VA establish this presumption immediately. For the foregoing reasons, the Secretary is issuing this rule as an interim final rule with immediate effect.

Unfunded Mandates

The Unfunded Mandates Reform Act of'1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action'' requiring review by the Office of Management and Budget, as any regulatory action 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 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 entitlement recipients; 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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this interim final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule could affect only VA beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: August 1, 2008.

James B. Peake,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Add § 3.318 to read as follows:

§ 3.318 Presumptive Service Connection for Amyotrophic Lateral Sclerosis.

(a) Except as provided in paragraph (b) of this section, the development of amyotrophic lateral sclerosis manifested at any time after discharge or release from active military, naval, or air service is sufficient to establish service connection for that disease.

(b) Service connection will not be established under this section:

(1) If there is affirmative evidence that amyotrophic lateral sclerosis was not incurred during or aggravated by active military, naval, or air service;

(2) If there is affirmative evidence that amyotrophic lateral sclerosis is due to the veteran's own willful misconduct; or

(3) If the veteran did not have active, continuous service of 90 days or more.

(Authority: 38 U.S.C. 501(a)(1))

[FR Doc. E8–21998 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AM75

Schedule for Rating Disabilities; Evaluation of Residuals of Traumatic Brain Injury (TBI)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising the portion of the Schedule that addresses neurological conditions and convulsive disorders. The effect of this action is to provide detailed and updated criteria for evaluating residuals of traumatic brain injury (TBI).

DATES: *Effective Date:* This amendment is effective October 23, 2008.

Applicability Date: The amendment shall apply to all applications for benefits received by VA on or after October 23, 2008. The old criteria will apply to applications received by VA before that date. However, a veteran whose residuals of TBI were rated by VA under a prior version of 38 CFR 4.124a, diagnostic code 8045, will be permitted to request review under the new criteria, irrespective of whether his or her disability has worsened since the last review or whether VA receives any additional evidence. The effective date of any increase in disability compensation based solely on the new criteria would be no earlier than the effective date of the new criteria. The effective date of any award, or any increase in disability compensation, based solely on these new rating criteria will not be earlier than the effective date of this rule, but will otherwise be assigned under the current regulations governing effective dates, 38 CFR 3.400, etc. The rate of disability compensation will not be reduced based solely on these new rating criteria.

FOR FURTHER INFORMATION CONTACT: Rhonda F. Ford, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (727) 319–5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 3, 2008, VA published in the **Federal Register** (73 FR 432) a proposal to amend VA regulations to revise the material under diagnostic code 8045, Brain disease due to trauma, in 38 CFR 4.124a (neurological conditions and convulsive disorders) in the VA Schedule for Rating Disabilities (the rating schedule). Interested persons were invited to submit written comments, suggestions, or objections on or before February 4, 2008. We received comments from the following groups and associations: American Optometric Association, Brain Injury Association of America, American Speech-Language-Hearing Association, Moss TBI Model System Centers, Senate Committee on Veterans' Affairs, The American Legion and National Veterans Legal Services Program, Disabled American Veterans, Department of the Army Surgeon General, National Organization of Veterans Advocates, Blinded Veterans Association, Veterans Outreach of the

Cape and Islands, Wounded Warrior Project, and American Federation of Government Employees Local #2823 of Cleveland, Ohio. In addition, we received comments from 6 concerned individuals, including one affiliated with the Department of Kinesiology, Indiana University, and one affiliated with Yale Occupational and Environmental Medicine. We have made many changes based on these comments.

Title of Diagnostic Code 8045

One commenter disagreed with the change in the title of diagnostic code 8045 from ''Brain disease due to trauma'' to ''Residuals of traumatic brain injury''. The commenter said that this represents an obfuscation of the disease process of brain injury and that raters could misunderstand the conditions they are evaluating as static versus dynamic, potentially evolving conditions. Another commenter supported the updated title.

We disagree that the revised title would cause rater misunderstanding. Raters use the information provided in medical examinations to determine an evaluation based on the criteria under the diagnostic code for the condition. The examiner who conducts TBI disability examinations for the Compensation and Pension Service will be asked if the condition has stabilized, and, if not, when stability is expected. If the condition has not stabilized, a future examination will be scheduled. Furthermore, any time a service-connected condition such as TBI worsens, a veteran may provide additional medical information and request a re-evaluation. Therefore, there are provisions to take into account changes in the status of TBI residuals and to re-evaluate when appropriate.

Comment Period

One commenter recommended that we provide a full 60-day comment period for the public to adequately assess the proposed rule and develop cogent comments because 30 days is an inadequate time frame for response. We agree that 30 days is a short time in which to analyze a complex regulation. However, there is a critical need for specific criteria to evaluate the many veterans who have suffered a TBI, and we made a decision to expedite the regulation to the extent possible. We did receive a wide array of comments on numerous aspects of the proposed regulation from many organizations and individuals.

Anoxic Brain Injury

We received three comments concerning anoxic brain injury, a condition resulting from a severe decrease in the oxygen supply to the brain that may be due to any of a number of possible etiologies, including trauma, strangulation, carbon monoxide poisoning, stroke, and many others. These commenters felt that when anoxic brain injury is due to brain trauma, it should be taken into account in this regulation, and one commenter also felt it should be added to the title of diagnostic code 8045.

As stated in the supplementary information to the proposed rule, revised diagnostic code 8045 addresses a specific condition, namely, an injury to the brain from an external force that results in immediate effects such as loss or alteration of consciousness, amnesia, or sometimes neurological impairments. Anoxic brain injury does not necessarily fit this definition since it has many possible etiologies other than trauma. Raters have flexibility in many cases in selecting the most appropriate diagnostic code(s) to use to evaluate a condition, particularly when the specific condition is not listed in the rating schedule. They could, therefore, evaluate anoxic brain injury under diagnostic code 8045 if the TBI criteria are appropriate to the findings. However, anoxic brain injury is common enough in veterans to warrant its own diagnostic code, and adding a specific diagnostic code would also allow statistical tracking of the numbers of veterans who suffer an anoxic brain injury.

We therefore plan to add anoxic brain injury to the neurological conditions and convulsive disorders section of the rating schedule (§ 4.124a of this part) as part of the overall revision of that section. Until anoxic brain injury is added to the rating schedule, it can be rated analogously, depending on the specific medical findings in a particular case, to TBI under diagnostic code 8045 or to another condition, such as brain, vessels, hemorrhage from (diagnostic code 8009), if hemorrhage is the cause; organic mental disorder, other (including personality change due to a general medical condition) (diagnostic code 9327 in the mental disorders section of the rating schedule (§ 4.130 of this part)); nerve damage, under one or more diagnostic codes for specific nerves that are affected; etc.

Definition and Classification of TBI

In the preamble to the proposed regulation, we provided a brief definition of TBI as an injury to the brain from an external force that results in immediate effects such as loss or alteration of consciousness, amnesia, or sometimes neurological impairments. We further stated that these abnormalities may all be transient, but more prolonged or even permanent problems with a wide range of impairment in such areas as physical, mental, and emotional/behavioral functioning may occur. We received multiple comments concerning this definition. One commenter suggested using the guidelines developed by the Mild Traumatic Brain Injury Committee of the Head Injury Interdisciplinary Special Interest Group of the American Congress of Rehabilitation Medicine because the use of the term ''immediate effects'' in the proposed definition would discount effects that emerge later. The definition in the preamble to the proposed regulation is very similar to the commenter's suggested definition, which requires, in part, a period of loss of consciousness, any loss of memory for events immediately before or after the accident, and any alteration in mental state at the time of the accident (e.g., feeling dazed, disoriented, or confused); or focal neurological deficit(s) that may or may not be transient. Therefore, the commenter's suggested definition also requires immediate effects, and has very similar provisions, and we make no change based on this comment.

A related comment was that there may not always have been loss or serious alteration of consciousness in patients with TBI and that the immediate effects may be subtle and unnoticed in the chaos of battle and that the language should make this point clear to adjudicators. The adjudicators (raters) who evaluate the effects of TBI do not make the diagnosis of TBI. Raters rely upon a diagnosis made by clinicians, based on a standard definition and criteria, and the brief definition in the proposed regulation does not require a ''serious'' alteration of consciousness but simply ''loss or alteration of consciousness''. We therefore make no change based on this comment.

Another commenter suggested we focus more attention on an objective, standardized assessment of acute TBI severity as near as possible to the time of injury. This comment is beyond the scope of this regulation as veterans do not present for disability evaluation at or near the time of injury, and this comment is more pertinent to those who assess injured service members at the time of injury.

Another commenter stated that the categories of ''minimal'' or ''sub

clinical'' should be added to ''mild,'' ''moderate,'' and ''severe'' TBI (which are the usual categories of TBI in standard definitions), since TBI may show no documentable focal neurological dysfunction or serious concussion in the immediate post-injury period. We make no change based on this comment, as we have provided a brief version of a standard definition of TBI that was developed and concurred in by a panel of TBI experts from VA and the Department of Defense and that is now in standard use by both Departments. The definition does not require that either ''focal neurological dysfunction'' or ''serious concussion'' be present for a diagnosis of TBI. Moreover, even if TBI results in immediate documentable focal neurological dysfunction or serious concussion, those effects need not persist for a veteran to be compensated for TBI residuals. The regulation provides compensation for a wide variety of residuals, including emotional impairment, impaired judgment, social behavior, etc.

We also note that the definition of TBI commented upon does not even appear in our regulation. If a veteran claims compensation for residuals of TBI and has an in-service diagnosis of TBI, it is unlikely that VA would question such a diagnosis absent an evidentiary reason to do so. The purpose of this regulation is to provide our evaluators with a basis to rate any symptoms—objective or subjective—that a medical professional has linked to one or more in-service TBIs. If such an injury has already been noted during service, the medical examiner will simply have to determine whether the current disability is etiologically consistent with that injury.

Another commenter said that the proposed definition of TBI does not take into account the fact that mild TBI is epidemiologically distinct from moderate and severe TBI and that failure to consider the different epidemiological factors of mild TBI may result in awarding disability ratings for impairments associated with other non-neurological disorders.

It is clinicians, rather than raters, who examine veterans with TBI and make decisions regarding the diagnosis of TBI and what findings are associated with that diagnosis. This regulation does not provide separate criteria for mild, moderate, and severe TBI, which are designations made at the time of the initial injury and, as stated in the proposed regulation, do not necessarily correlate with the severity of residual effects. We make no change based on his comment.

Minimum Evaluation for TBI and Suggestion for Interim Regulation

We received two comments suggesting that we provide a minimum evaluation for TBI. There is a wide range of severity in residuals of TBI. Some veterans are totally disabled by the residuals, while others suffer minimal or no effect on their employability as a result of their TBI. There is no anticipated minimum level of severity of TBI residuals that would apply to all veterans, even those discharged due to a TBI. Some veterans may be discharged because they are totally or significantly disabled, while others may be discharged because the injury was sufficient to prevent the carrying out of the individual's particular service duties, even if the residuals would not prevent the individual from being able to be gainfully employed as a civilian.

Another commenter suggested that we issue an interim regulation similar to 38 CFR 4.129 (Mental disorders due to traumatic stress), which states that when a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six-month period following the veteran's discharge to determine whether a change in evaluation is warranted. The commenter suggested that the interim regulation provide that if a veteran is discharged due to TBI, VA should assign an evaluation of not less than 50 percent and schedule an examination 6 months following the veteran's discharge.

As discussed above, the fact that a veteran is discharged due to TBI does not necessarily imply that it is at least 50-percent disabling. It would therefore not be appropriate to assign a 50-percent evaluation in all cases, no matter how minor the residuals. In addition, certain residuals of TBI, in particular, the group of subjective symptoms that commonly occur after TBI, may be very disabling in the short term, but the great majority of subjective symptoms substantially improve or completely resolve within 3 months following the TBI. Such residuals would not warrant a post-discharge evaluation of at least 50 percent for 6 months or more. There is an existing regulation (38 CFR 4.28, Prestabilization rating from date of discharge from service) that applies under certain conditions to TBI and any other disability resulting from disease or injury. It provides for the assignment of a 100-percent evaluation in the immediate post-discharge period for an unstabilized condition with severe disability, such that substantially gainful employment is not feasible or advisable, or a 50-percent evaluation for unhealed or incompletely healed wounds or injuries with material impairment of employability likely. These evaluations do not require an examination before assignment and will be continued for 12 months following discharge. Section 4.28 provides substantially the same benefit for veterans with TBI as the suggested interim regulation would, but does require that a certain level of severity be met. We find the criteria in § 4.28 to be a reasonable and appropriate way to evaluate many veterans with TBI residuals in the immediate post-discharge period and therefore do not agree that an interim regulation is needed. While 38 CFR 4.28 also applies to mental disorders, determining the stability, likelihood of improvement, and effect on employment of post-traumatic stress disorder (PTSD) and related mental disorders is considerably more difficult than in the case of a neurologic disorder such as TBI and often requires a long period of observation and treatment to determine. Section 4.129 ensures that veterans with certain mental disorders, primarily PTSD, receive an immediate post-discharge evaluation of at least 50 percent, when discharged for those mental disorders, since applying 38 CFR 4.28 might be very difficult in the case of those mental disorders.

Limited Scope of Abnormalities in Regulation

We received 2 comments on the scope of the abnormalities included in the regulation. The commenters said that the proposal only takes into account one body system and one injury rather than the totality of the pathophysiology of the whole body and associated injuries and that there could be permanent problems in the areas of cognitive, physical, mental, communicative, emotional, behavioral, social, vocational or medical (neurological, cardiovascular, neuroendocrine, immunological, orthopedic, respiratory, renal) function.

We disagree with the commenter because the regulation does take into account all possible affected body systems and all disabling effects. It provides specific criteria only for evaluating cognitive impairment and subjective symptoms that result from TBI because all other disabling effects can be evaluated under existing diagnostic codes regardless of the body system affected. The regulation lists

numerous additional effects of TBI: Motor and sensory dysfunction, including pain, of the extremities and face; visual impairment; hearing loss and tinnitus; loss of sense of smell and taste; seizures; gait, coordination, and balance problems; speech and other communication difficulties, including aphasia and related disorders, and dysarthria; neurogenic bladder; neurogenic bowel; cranial nerve dysfunctions; autonomic nerve dysfunctions; and endocrine dysfunctions. It further states that these are not the only possible residuals and that residuals either on this list or not on this list that are reported on an examination are to be evaluated under the most appropriate diagnostic code. Therefore, the regulation directs how to evaluate any residual of TBI.

Symptoms Cluster Evaluation

The proposed regulation provided criteria for the evaluation of a cluster of subjective symptoms, which may be the only residual of TBI. Currently, subjective symptoms due to TBI can be rated under diagnostic code 8045 at a maximum of 10 percent. The proposed regulation based the evaluation of subjective symptoms on the number of symptoms present, and provided evaluation levels of 20, 30, and 40 percent. It required that at least 3 of a specified group of symptoms be present to qualify as a cluster. We received many comments on this proposal, including some stating that subjective complaints can be more than 40 percent disabling as individual symptoms, that the levels of evaluation do not take the severity and frequency of symptoms or functional impairment into account, that a veteran could be catastrophically disabled by a single symptom, and that veterans with TBI should not need an extra-schedular evaluation to receive a total disability rating.

We agree in general with the commenters and, based on those comments, have substantially changed the method of evaluating subjective symptoms. We have incorporated subjective symptoms into a rating table (proposed as a table for rating only cognitive impairment) that now combines the evaluation of cognitive impairment and other residuals of TBI not otherwise classified. The subjective symptoms are now evaluated in a facet called subjective symptoms at a level between 0 and 2 based on functional impairment, that is, the extent of interference with the veteran's ability to work; to perform instrumental activities of daily living; or to have close relationships in work, family, or other settings. We have retained the requirement that three or more subjective symptoms be present but have removed the requirement that the symptoms be from a defined list, because some of the items on our proposed list, such as inappropriate social behavior, aggression, and impulsivity, overlap with, or may themselves be considered to be neurobehavioral effects. We will rely on the examiner to determine what constitutes a subjective symptom and what constitutes an observable neurobehavioral effect for purposes of evaluating these facets using the table in the regulation.

In conjunction with this change, we added a note defining ''instrumental activities of daily living'' as referring to activities other than self-care that are needed for independent living, such as meal preparation, doing housework and other chores, shopping, traveling, doing laundry, being responsible for one's own medications, and using a telephone. We also explain in the note that ''instrumental activities of daily living'' are distinguished from ''activities of daily living,'' which refers to basic self-care and includes bathing or showering, dressing, eating, getting in or out of bed or a chair, and using the toilet.

We also received a comment that the frequency, severity, and duration of other neurobehavioral effects in the cognitive impairment table should be assessed instead of the number of effects. We therefore changed the way of evaluating neurobehavioral effects from a method based on the number of effects to one based on the extent of interference with workplace interaction and social interaction. These changes provide a more functional-based assessment for both subjective symptoms and neurobehavioral effects.

The proposed rule prohibited separate evaluations for cognitive impairment and the symptoms cluster. One commenter stated that this prohibition should include only those disabilities with overlapping symptoms. This prohibition no longer applies since both cognitive impairment and subjective symptoms are evaluated under the same table, and the effects of both would be considered in determining an evaluation.

We received 2 comments about the current maximum 10-percent evaluation for subjective symptoms. The first commenter said that this maximum evaluation should be removed immediately. The other commenter said that the current 10-percent limitation is not an issue as most veterans also have PTSD and the cognitive/emotional impairments are considered in the evaluation for PTSD. The second commenter also said that, if substantiated on medical examination, complaints are no longer ''purely subjective''.

Since the 10-percent limitation is a regulatory requirement, we must proceed with the regulatory process to remove it, as we have done in this regulation. If we removed it in a separate rulemaking without replacing it with another rule, there would be no provision at all for rating subjective symptoms, a lack that would clearly disadvantage veterans. In any case, we proposed to eliminate the 10-percent limitation on ratings for subjective symptoms and adopt that proposal in this final rule. As for the second comment, we disagree that subjective symptoms reported on examination are no longer purely subjective. While a clinician's judgment is important in assessing the validity of complaints, there are no tests, for example, that would prove or disprove that a headache is present. The fact that symptoms are reported on an examination does not establish them as objective. Finally, not all veterans with disabling subjective symptoms due to TBI also have PTSD, and we therefore need a way to take the subjective symptoms into account, as we have done in the table in this regulation. We make no change based on these comments.

One commenter stated that it is unclear which set of diagnostic criteria, the DSM–IV research criteria for postconcussional disorder or the ICD–10–CM criteria for postconcussional syndrome, are to be used when evaluating symptoms clusters. (''DSM–IV'' refers to the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, and ''ICD–10–CM'' refers to the International Classification of Diseases, Tenth Revision, Clinical Modification.) The proposed rule did not use either set of criteria for evaluating symptoms clusters, nor does the final rule. We did not limit the evaluation of symptoms clusters to post-concussion syndrome or mild TBI (a term sometimes used interchangeably with post-concussion syndrome), as the commenter suggests. The table for the evaluation of cognitive impairment and subjective symptoms in the final rule is also not limited to TBI that was classified at any particular level. The regulation states in note (4) under diagnostic code 8045 that the initial classification of TBI at or near the time of injury as mild, moderate, or severe does not affect the rating assigned under diagnostic code 8045. We therefore make no change based on this comment.

One commenter said that data are insufficient to support VA's statement that symptoms following mild TBI resolve in 3 months for most affected people and in a small percentage become permanent. Research is continuing in this area, but there are numerous references that support this statement, including ''Mild Traumatic Brain Injury and Postconcussion Syndrome'' (Michael A. McCrea, 86, 2008), which states that symptoms after mild TBI are typically transient, with rapid or gradual resolution within days to weeks after injury in an overwhelming majority of patients with mild TBI.

One commenter felt that the term post-concussion syndrome should be dropped. That term is synonymous with the term mild TBI. We did not in the proposed rule, and have not in the final rule, limited the evaluation of mild, moderate, or severe TBI to any single criterion or set of criteria. Therefore, we have not used the term post-concussion syndrome in the final rule. Another commenter stated that the proposed criteria do not acknowledge all of the complexities of evaluating residuals of mild TBI and that self-reported symptoms should not be ignored. A third commenter said that all types of TBI should be assessed for cognitive function because an individual with mild TBI may also have cognitive impairment. The final rule evaluates cognitive impairment and subjective symptoms under a single table, so that the severity of all residuals can be taken into account, regardless of the initial severity designation of the episode of TBI. We therefore make no changes based on these comments.

Cognitive Impairment Evaluation

The proposed regulation included a table for the evaluation of cognitive impairment based on 11 facets of the condition, with criteria for evaluation of each of the facets at levels of 0 through 4, although not every facet contained all 5 levels, since certain levels were not appropriate for some facets. The 3 highest evaluation levels were to be added and the sum divided by 3 and rounded to the nearest whole number. The resulting numbers equated to percentage evaluations as follows: 0 = 0 percent, 1 = 10 percent, 2 = 40 percent, 3 = 70 percent, and 4 = 100 percent. We received many comments concerning the table's reliability and validity, the specificity of the facets in general, the content of specific facets, and the evaluation formula itself.

Comments Concerning Reliability, Validity, and Scientific Evidence of Accuracy of the Table

Three commenters said the cognitive impairment table lacked reliability, validation, and scientific evidence of accuracy. By statute (38 U.S.C. 1155), VA disability ratings are based on average impairment of earning capacity, as reflected by evaluation criteria in the rating schedule, which the Secretary may revise from time to time ''in accordance with experience.'' While medical information and expertise are significant factors in revising the list of rating schedule disabilities and evaluation criteria, they are not the only relevant factors that VA must rely upon in crafting its rating schedule. We must also consider social and sociological factors in determining the level of impaired employability caused by a particular disability.

The American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides) represent a widely used disability evaluating system, especially in evaluating disability for workers' compensation. The AMA relies on a large group of editors, advisory panelists, and contributors who are MDs and PhDs. VA has consulted with numerous TBI experts from various specialty areas (psychology, neurology, etc.) in developing this regulation. It thus appears that percentage evaluations are derived by the AMA in ways similar to VA's, and we make no change based on this comment. VA has considered the AMA's approach and has sought and relied on expert opinion in a similar manner.

Comment Concerning Lack of Specificity of Data To Determine Rating

Another commenter stated that there is lack of specificity about what data will be used to determine the ratings and asked if they will be based solely on medical records review or whether VA will accept input from family, caregivers, and medical and rehabilitation personnel. The commenter also asked if ratings can be assigned without neuropsychological testing and asked about veterans for whom English is not their first language. The commenter also asked if education level is a factor. One commenter said that there are a mixture of subjective and objective findings in the table, but the type of information to be used for rating is unclear.

VA has a duty to assist veterans in gathering evidence necessary to substantiate their claims, and there is a complex set of regulations, guidelines, and case law that raters follow in doing so. Raters are required to consider all evidence of record in making a disability determination. This includes the service medical records plus any evidence or statements the veteran chooses to submit from VA or non-VA medical facilities, family, friends, caretakers, or any others familiar with the veteran's disability. In most cases, a Compensation and Pension disability examination will be conducted, and the report based on that examination will be an important part of the record to be reviewed. There is no need to include in a particular rating schedule provision information about what evidence VA will use in applying that provision, since the same general regulations and procedures governing evidence to be considered apply in all cases.

Neuropsychological testing is not conducted in all cases. The need for such testing is left to the discretion of the clinician who conducts the disability examination. Many veterans will have had such testing prior to entering the disability evaluation process, and, if so, their results would be part of the evidence considered by raters. In other cases, while the veteran may claim to have suffered a TBI, the history may not confirm that such an injury occurred, or there may be no current symptoms, if one did occur. Conducting neuropsychological testing in such cases would be unnecessary and a wasteful use of resources. Concerning veterans for whom English is not their first language, the examiner determines whether or not an adequate history can be obtained. If not, the examiner can order a translator to appear with the veteran at a new exam. In the alternative, the veteran's history can be obtained from other sources (family, friends, caretakers, medical records, etc.), as noted above. The comment about whether education level is a factor is unclear but does not appear to be pertinent. We make no change based on this comment.

Comments Concerning Specificity and Objectivity of Facets of Table

A number of commenters expressed concern that the proposed cognitive impairment table did not include sufficient specificity and objectivity for the evaluation of facets in the table, and said that there was a lack of clarity as to how raters will determine whether the criteria are met.

We agree in general and have revised the contents of the table to enrich the criteria by including additional specificity, to the extent feasible. For example, we proposed to evaluate judgment at level 2 of impairment based

solely on the criterion of ''Moderately impaired.'' We have changed the criteria for level 2 to ''Moderately impaired judgment. For complex or unfamiliar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, although has little difficulty with simple decisions.'' Another example is visual spatial function, where the proposed criteria for level 2 were ''Mildly impaired. May get lost in unfamiliar surroundings, occasional difficulty recognizing faces.'' We have revised the criteria for level 2 to ''Moderately impaired. Usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions, and judging distance. Has difficulty using assistive devices such as GPS (global positioning system).'' The changes not only add more specificity but help distinguish the impairment levels from one another. In some cases, this added precision allowed us to provide additional impairment levels so that now all facets except social interaction, subjective symptoms, neurobehavioral effects, and consciousness have all impairment levels of 0 through total. In the proposed regulation, 6 of the 11 facets lacked one or more of the 0 through 4 levels.

For the most part, medical examiners, not raters, will be responsible for providing specific information about each facet that is sufficient to allow raters to assign levels of evaluation. For example, the examiners will be specifically asked to state the level of severity of impaired judgment. Examiners will be guided by an examination worksheet (for dictated examination reports) or a computerized examination template (for electronically generated examination reports) for TBI, which will be developed in partnership with the Veterans Health Administration to ensure that the examination guidance is technically accurate and sufficiently descriptive to assist examiners in considering all possible ratable criteria. This is standard practice for VA disability examinations for all conditions and assures that sufficient information is provided to raters so that they can make accurate and consistent decisions nationwide.

We have also revised the titles of some of the facets for more clarity, specificity, and precision. We changed the title of the ''Memory, attention, concentration'' facet by adding ''executive functions'' to the title, since these 4 functions are most commonly affected in cognitive impairment. We revised the title of the ''Appropriate response in social situations'' facet to ''Social interaction,'' the ''Visual-spatial function'' facet to ''Visual spatial orientation,'' and the ''Speech and language disorders'' facet to ''Communication.'' We also revised the title of the ''Other neurobehavioral effects'' facet to ''Neurobehavioral effects''.

Comments Concerning Accuracy of Functional Impairment and Vocational Incapacity in the Table

One commenter stated that many of the criteria in the table do not appear to accurately reflect the degree of functional impairment and vocational incapacity that should be expected from such loss. The commenter stated that several criteria that are assigned a score of 3 or 4 should be individually rated at 100 percent for unemployability without reference to other criteria, including a veteran limited to working in a sheltered workshop or unable to work or attend school, a veteran needing assistance with Activities of Daily Living (ADLs), a veteran who often requires supervision for safety, etc.

We agree with the commenter and have revised the table in several ways. We changed the facet levels from the proposed 0 through 4 to levels of 0 through 3, with an additional higher level called ''total,'' representing a 100-percent evaluation, included in most facets. We removed altogether the 3 facets for work or school, ADLs, and supervision for safety. We have determined that the effects on work or school are reflected in the disabling effects of all of the other facets and therefore work or school is not needed as a separate facet. The facets for ADLs and supervision for safety represent impairments that would be compensated by means of special monthly compensation (SMC), a special monthly monetary payment that is made under certain statutorily prescribed circumstances. SMC is provided to a veteran who is receiving disability compensation and who needs the regular assistance of another person in attending to the ordinary activities of daily living or to avoid the ordinary hazards of the daily environment. There are many residuals of TBI, including cognitive impairment, neurobehavioral effects, problems with visual spatial orientation, and impaired consciousness that may meet the criteria for entitlement to SMC, depending on their severity. If a veteran has such residuals of TBI, the veteran would be entitled to both SMC and disability compensation when the need for regular assistance of another person in attending to the ordinary activities of daily living or to avoid the ordinary hazards of the daily environment is present. However, the need for assistance with ADLs and the need for supervision with safety are impairments that in and of themselves qualify an individual for SMC regardless of their severity. If these impairments were considered in assigning a percentage disability rating and in determining entitlement to SMC, this would be compensating twice for the same manifestations of a disability, which would constitute pyramiding, and this is prohibited, per 38 CFR 4.14 (Avoidance of pyramiding).

Several commenters said that the criteria for consideration of SMC need to be explicitly delineated. This is not necessary, however, because the SMC regulations potentially apply in all cases and therefore need not be repeated in every rating schedule provision. We have, however, provided a direction under diagnostic code 8045 to consider SMC, and it states: ''Consider the need for special monthly compensation for such problems as loss of use of an extremity, certain sensory impairments, erectile dysfunction, the need for aid and attendance (including for protection from hazards or dangers incident to the daily environment due to cognitive impairment), being housebound, etc.'' This is similar to a reminder in the proposed regulation to consider SMC.

Another commenter said that we should add to the regulation a statement that raters must consider, in addition to SMC, total disability ratings, total disability ratings based on unemployability, total disability ratings for pension, and extra-schedular evaluations. As with the criteria for SMC, these special provisions potentially apply in all cases and therefore need not be repeated in every rating schedule provision. Moreover, unlike the SMC criteria, which are disability-specific and therefore relevant to the conditions listed in the TBI rule, the criteria for these ratings are not specific to any condition and therefore have no special applicability to TBI. We make no change based on this comment.

The 7 facets that have levels that we have called ''total,'' and the associated criteria, are: Under the memory, attention, concentration, executive functions facet, objective evidence on testing of severe impairment of memory, attention, concentration, or executive functions resulting in severe functional impairment; under the judgment facet, severely impaired judgment; for even routine and familiar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, for example, unable to determine appropriate

clothing for current weather conditions or judge when to avoid dangerous situations or activities; under the orientation facet, consistently disoriented to two or more of the four aspects (person, time, place, situation) of orientation; under the motor activity facet, motor activity severely decreased due to apraxia; under the visual spatial orientation facet, severely impaired, may be unable to touch or name own body parts when asked by the examiner, identify the relative position in space of two different objects, or find the way from one room to another in a familiar environment; under the communication facet, complete inability to communicate either by spoken language, written language, or both, or to comprehend spoken language, written language, or both, unable to communicate basic needs; and under the new facet titled consciousness (discussed below), for persistently altered state of consciousness, such as vegetative state, minimally responsive state, coma.

One commenter said that guidelines should be extended to include individuals with persistent disturbances in consciousness (e.g., vegetative state, minimally conscious state). We agree with the commenter and have added a new facet for consciousness, with only a single severity level of ''total'' for persistently altered state of consciousness, such as vegetative state, minimally responsive state, or coma, since any level of disturbance of consciousness would be totally disabling and warrant a 100-percent evaluation.

Other Comments on the Proposed Cognitive Impairment Criteria

One commenter said that the regulation should include more specific guidelines to account for fluctuations in residuals. All claims are rated based on all of the evidence of record, which will include evidence of fluctuation in symptoms. In addition, the rating can be increased if the disability worsens in the future. We make no changes based on this comment.

One commenter said that we should clearly state that cognitive impairment refers strictly to mental function and not other aspects of the disability. That is unnecessary, since the clinician will determine which signs and symptoms are part of cognitive impairment and which are not. We make no change based on this comment.

One commenter suggested separating out some of the findings of facets that include more than one type of impairment, including the memory, attention, concentration facet and the speech and language disorders facet. The commenter felt the various elements of a single facet should be separately evaluated. We disagree, as this already complex regulation would become even more complex, to the point that raters would find it extremely difficult to use. In addition, the criteria in facets with multiple criteria are in related areas of functional impairment and not all criteria need to be met for a given level of evaluation. A 100-percent evaluation, for example, can be assigned in some cases where a facet encompasses multiple criteria even if only one of the impairments is assessed as total. We therefore make no change based on this comment.

The same commenter stated that apraxia is uncommon after TBI and that it is unclear how an intact motor and sensory system (a requirement for evaluating the motor activity facet) would be determined. Apraxia is widely reported to be a component of TBI. For example, the Veterans Health Initiative booklet titled ''Traumatic Brain Injury,'' a publication of the Veterans Health Administration, states on page 12 that apraxia is an effect of diffuse axonal injury of the brain, which is a common occurrence in TBI, and an article titled ''Dementia Due to Head Trauma'' by Julia Frank, MD, Director of Medical Student Education in Psychiatry, Associate Professor, Department of Psychiatry and Behavioral Sciences, George Washington University School of Medicine (available at *http://www.emedicine.com/med/topic3152.htm*), states that testing for aphasia and apraxia are important in head injury, along with evaluation of retention, short-term memory, and abstraction. Other types of motor disabilities such as weakness, paralysis, sensory loss, etc., would be separately evaluated under other diagnostic codes. A neurologic examination would be the basis of a determination as to whether or not the motor and sensory systems are intact. We make no change based on this comment.

Another commenter stated that apraxia is the inability to perform a skilled movement, despite the person's desire or intent and ''physical inability'' to perform the movement, and suggested that this distinction be included as a note. Presumably the commenter meant ''ability'' rather than ''inability'' to perform the desired movement. In both the proposed and final regulation, under the motor impairment facet, we indicate that apraxia is the inability to perform previously learned motor activities, despite normal motor function, and we believe this is a sufficient description for rating purposes.

One commenter said that the levels of functioning for neurobehavioral effects lack criteria for frequency and severity. It would make for an extremely complex regulation if we provided criteria for the frequency and severity of each possible individual neurobehavioral effect, and adding a method to combine such assessments into an overall evaluation would add to the complexity. Therefore, we have provided evaluation criteria for neurobehavioral effects based on the extent of interference with workplace interaction and social interaction, as discussed above. We also listed numerous examples of neurobehavioral effects at the 0 level, and indicated that any of the effects may range from slight to severe but that verbal and physical aggression are likely to have a more serious impact on workplace interaction and social interaction than some of the other effects.

One commenter disagreed with the statements in the preamble to the proposed rule that cognitive impairment is defined as decreased memory, attention, and executive functions of the brain and that primarily those who experienced a moderate or severe TBI would require evaluation under these criteria. The commenter felt that the need for cognitive assessment should be customized to each individual veteran's clinical signs and symptoms irrespective of the severity of the TBI in the immediate post-injury period and that all veterans with TBI should undergo cognitive evaluation for the claimed symptoms.

We agree in part with the commenter. The final rule does not provide different criteria depending on the original classification of TBI and does not limit evaluation under these criteria to veterans who experienced a moderate or severe TBI. Therefore, every veteran examined for residuals of TBI will be screened for cognitive impairment, regardless of the level of severity in the immediate post-injury period. Additional testing will then be conducted as indicated. However, we disagree that cognitive impairment is not defined as decreased memory, attention, and executive functions of the brain. The Veterans Health Initiative booklet titled ''Traumatic Brain Injury,'' referred to above, states on page 73 that the following symptoms have been seen as the most prominent cognitive sequelae following moderate to severe TBI: Attention and concentration problems, new learning and memory deficits, and executive control dysfunction.

Visual-Spatial Facet

One commenter suggested we add reading difficulty to the visual-spatial function facet (retitled visual spatial orientation). We believe that the communication (proposed as speech and language) facet adequately covers the issue of reading, via its criteria concerning the ability to communicate and to comprehend written language. Another commenter noted that the differential diagnosis of the visual-spatial function is not included. The differential diagnosis of a condition, which is often used clinically in arriving at a diagnosis, is not included because the purpose of the rating schedule is to provide criteria for determining the level of severity of a condition that has already been diagnosed by a clinician. Including a differential diagnosis in the rating schedule is neither necessary nor appropriate. We make no change based on this comment.

Another commenter stated that additional symptoms, such as loss of color vision and photosensitivity, should be included in the visual-spatial facet. As the preamble of the proposed regulation stated, our intent was to provide guidance for the evaluation of the most common, but not all possible, residuals of TBI. Visual-spatial orientation (the facet that was titled visual-spatial function in the proposed rule) refers to the relationship of objects in space to the body. Neither photosensitivity nor loss of color vision falls into this category. Since photosensitivity is a subjective symptom that is common after TBI, we have, however, included it as an example in the subjective symptoms facet at level 1. Vision screening is part of the TBI examination, and any signs or symptoms of visual problems found on screening require an examination by a vision specialist. If there are complaints of loss of color vision, special testing can be done to confirm the type and severity. It is therefore not a subjective symptom, as many aspects of vision impairment are not, but would be assessed under the direction in this rule to evaluate physical (including neurological) dysfunction under an appropriate diagnostic code. Visual impairment is one of the dysfunctions listed under this direction.

The same commenter said that the visual-spatial function facet should be reviewed by both neuro-opthalmology and low vision optometry experts, so that they can revise the facet as necessary to avoid inaccurate ratings for veterans who have significant impairments to their visual system. In practice, a vision specialist will examine any veteran with TBI who has vision complaints or in whom vision abnormalities are found or suspected on a screening examination. In addition, the vision specialists have the option of requesting additional special examinations when needed. However, the degree of specificity and complexity that neuro-opthalmology and low vision optometry experts might add to the facet would not necessarily assist in the disability evaluation process, because a fairly gross assessment of functional impairment allows raters to make an appropriate evaluation in the great majority of cases. Moreover, specific veterans may receive special examinations, where appropriate, as noted above. Finally, in exceptional cases where the schedular evaluations are found to be inadequate, an extra-schedular evaluation commensurate with the average earning capacity impairment may be assigned, based on such factors as marked interference with employment or frequent periods of hospitalization (see 38 CFR 3.321(b)). We make no change based on this comment.

Two commenters questioned how the judgment facet will be assessed, and they recommended more specific criteria. Judgment will be assessed by clinicians, as is routinely done during the course of examinations for mental disorders. We have added more specific information to the criteria in the judgment facet, indicating that judgment involves weighing the alternatives, understanding the consequences of choices, and making a reasonable decision.

One commenter suggested that the facet for supervision for safety should include not only the safety of the individual but also the safety of others. We have removed the supervision for safety facet because the need for supervision to protect the veteran from hazards in the environment would warrant SMC, as explained above. Verbal and physical aggressiveness would be evaluated under the subjective symptoms facet, and they are given as examples there.

One commenter said that the appropriate response in the social situations facet should include appropriate response in interpersonal relationships. The criteria in this facet, which we renamed social interaction, would encompass interpersonal relationships, as social situations include individual interaction and relationships as well as group interaction and relationships. We have revised the social situations facet, but we make no additional change based on this comment.

Cognitive Impairment Formula

Several commenters objected to the levels of evaluation for the facets and to the formula used to calculate the disability evaluation. One commenter said that using just 4 categories of impairment is too limited and that this limitation plus the lack of specificity could result in nearly all disability ratings for TBI being too low. Since, for most facets, percentage evaluations based on the table range from 0 to 100 percent, with levels of 10, 40, and 70 percent between them, the range of possible evaluations is broad and should be adequate for evaluating the severity of residuals. As stated above, an extra-schedular evaluation is available for exceptional cases in which the available evaluation criteria are not sufficient. Regarding the comment about lack of specificity, we have revised many of the criteria to make them more specific. Making them too specific, however, would disadvantage veterans because there is an extremely wide range of variability of the residuals of TBI, and leaving some flexibility in the criteria will allow evaluation based on a broad range of specific findings that may vary from veteran to veteran.

Another commenter said that the number of impaired facets should be weighted by the level of each facet, and the results combined by means of a specially designed combination table to calculate the additive disabling effects of TBI. We do not agree that this is necessary, and it would add greatly to the complexity of the regulation, without an obvious benefit. We make no change based on this comment.

Two commenters stated that not every facet includes every level between 0 and 4 (now 0 and total) but failed to notice that we pointed this out in the proposed regulation. The rationale is that not every facet warrants the entire gamut of evaluations, and we provided levels that we believe are most appropriate for each facet. One of these commenters recommended that a psychometrician examine the method of evaluation and that VA develop a plan to evaluate reliability and validity. This final rule reflects the input of medical professionals, some of whom contributed indirectly through research and public discussions about TBI and others who contributed directly by drafting or commenting on the rating criteria. Therefore, there is a scientific basis for the rule. Because the need for a new approach to TBI is both immediate and critical, we cannot delay further by submitting the criteria to a

psychometrician. However, VA will be paying close attention to the applications of this schedule in individual cases, and we will make any necessary revisions.

One commenter stated that the cognitive impairment table is unfair because a veteran requiring assistance with ADLs (formerly a facet) some of the time but less than half of the time could receive only a 10 percent evaluation. This comment is no longer pertinent since we have removed that facet. A similar comment we received to the effect that a veteran with only 3 facets of cognitive impairment could be unemployable but might only receive a 40-percent evaluation is also not pertinent now, since we have provided for a 100-percent evaluation for the most serious effects of these facets of TBI.

Neuropsychological Testing

Several commenters noted that we did not propose to require neuropsychological testing as part of every examination for TBI and did not provide guidance for the appropriate use of such testing. They felt such examinations are necessary.

We discussed this issue above in response to comments about specificity of the criteria and explained why we are leaving it to the discretion of the clinicians who examine veterans with TBI to determine when neuropsychological testing is needed. We make no change based on this comment.

Comorbid Mental Disorders

One commenter was concerned that mental health examiners who examine veterans with TBI may not be able to fully evaluate the veterans' physical problems related to TBI and wondered if we would have joint evaluations. We have developed and will issue updated Compensation and Pension Examination worksheets and computerized examination templates that will take into account the requirements of this regulation. These examination guidelines will include guidance, developed in association with the Veterans Health Administration's TBI experts, about who may conduct these examinations in order to ensure that all aspects of the veteran's disability are fully assessed.

One commenter stated that the rule should require VA to consider whether service connection is warranted for mental disorders secondary to service-connected TBI, while another commenter stated that VA rating officials should be careful not to attribute TBI signs and symptoms to a nonservice-connected mental disorder. There are several regulations that raters must apply in determining secondary service connection, and raters are very familiar with them and apply them daily. The applicable regulations need not be restated in this regulation as they apply in all cases.

Another commenter requested that we reinforce the fact that diagnosing or evaluating co-morbid mental disorders is difficult in someone with cognitive impairments. This information would be more appropriately conveyed to examiners and raters through training rather than through rating schedule regulations. VA has already carried out a number of TBI training initiatives and is planning even more extensive training in the near future, so that raters and clinicians will be well informed on the issues relating to the assessment of all aspects of TBI, including that of comorbid disorders. We make no change based on this comment.

We received 2 comments about proposed note number 1 under the cognitive impairment table, which required that a single evaluation be assigned either under the General Rating Formula for Mental Disorders or under the evaluation criteria for cognitive impairment (whichever provides the better assessment of overall impaired functioning due to both conditions) if the signs and symptoms of the mental disorder(s) and of cognitive impairment cannot be clearly separated. It also stated that if the signs and symptoms are clearly separable, VA would assign separate evaluations for the mental disorder(s) and for cognitive impairment.

One commenter said there should be more explanation for this determination because the criteria in the cognitive impairment table overlap with the criteria for evaluating mental disorders under 38 CFR 4.130, and because coexisting mental disorders may increase the TBI disability. According to the commenter, the note should state that if the signs and symptoms of a mental disorder and of cognitive impairment cannot be clearly separated, assign a single evaluation for whichever provides the better assessment and elevate that evaluation to the next higher evaluation. The second commenter said that this provision unfairly places the burden on the veteran and is inconsistent with the benefit of the doubt doctrine.

Regarding the first comment, the findings do overlap, and that is the reason the provision is needed. Pursuant to 38 CFR 4.14, Avoidance of pyramiding, VA is prohibited from evaluating the same impairments under different diagnoses, because to do so would effectively compensate the veteran twice for the same disability. Raters apply this regulation in numerous situations of overlapping symptoms, for example, when both mental and physical disorders are present, when more than one mental disorder or physical disorder (one service-connected and one not) is present, when there are two conditions affecting the same body system, with one service-connected and one not, etc. TBI is not unique in requiring the application of this regulation. Although the commenter stated that an evaluation encompassing both the effects of TBI and of a mental disorder should be elevated to the next higher level of evaluation than would be assigned based on whichever provides the better assessment (because the commenter felt that coexisting mental disorders may increase the TBI disability), we believe that the combined disabling effects of TBI and a mental disorder will be adequately taken into account by an evaluation that is based on ''the better assessment of overall impaired functioning due to both conditions,'' since such an assessment would include the extent of disabling effects due to both conditions. Regarding the second comment, the percentage evaluation is determined by the rater based on an assessment by the examiner, so there is no unique burden on the veteran in this situation. We make no change based on these comments.

Motor Impairment Evaluation

Two commenters expressed concern that there are no guidelines for selecting the appropriate code for evaluating such impairments of motor function as spastic hypertonia. We are planning to revise the neurologic section of the rating schedule to update it. One addition we plan is a rating formula for movement disorders, which would include such conditions as dystonia. We believe the neurologic rating schedule revisions will provide an adequate basis of evaluation for motor impairments of abnormal tone and spasticity. Until that regulation goes into effect, raters will use their judgment to evaluate such conditions analogously under the most appropriate diagnostic code in an individual case. We make no change based on this comment.

Cumulative Effects

Two commenters stated that we should emphasize that the effects of multiple TBIs are cumulative, and one of them said that the number of episodes should be tracked. Although a veteran who has had multiple episodes of even mild TBI is more vulnerable to

persistent residuals, this is not relevant to the evaluation of TBI residuals, which is based on the extent of current disability, whether due to a single service-connected TBI or to multiple service-connected TBIs. If there were several in-service injuries, the examiner would consider their possible cumulative effect, consistent with sound medical principles. Thus, whether there was one or repeated instances of head trauma in service, raters evaluate residuals based on current functional impairment when provided with a diagnosis of TBI and findings the examiner attributes to TBI. Therefore, so long as a current disability can be medically linked to service, it will not matter whether the veteran suffered one head trauma or several lesser head traumas during service. It might be useful for other entities to track the number of TBI episodes for their particular purposes, such as taking precautions to prevent additional TBIs in a veteran who has already experienced one or more. However, it is generally not necessary for disability evaluation purposes. Therefore, we make no changes based on these comments.

Tools and Concepts for Assessing Disability

Various commenters recommended that we include specific assessment tools as part of our evaluation criteria. These included calls for the use of the American Speech-Language-Hearing Association's Functional Communication Measures to assess speech and language; the American Association on Intellectual and Developmental Disabilities' Supports Intensity Scale, to rate frequency, intensity, and type of support needed to engage in home living, community, lifelong learning, employment, health and safety, social activities, protection and advocacy, medical supports, and behavioral supports; and assessment tools on the Center for Outcome Measurement in Brain Injury Web site.

While all of these tools may be useful for clinical purposes, including them as part of the rating process would make the regulation prohibitively complex. Some commenters stated that even the proposed regulation, without those tools, was too complex and would be too time consuming to implement. One commenter said that the proposed regulation is unworkable due to its complexity, that it is difficult and burdensome, and that because of raters' productivity standards, employees might be pressured to take shortcuts on the case. Another said that the proposal will more than triple the work to rate a claim, and that there will be a long learning curve for raters. Some items assessed by the recommended tools, such as rating the type of support needed to engage in lifelong learning and rating medical and behavioral supports, go well beyond VA's statutory requirement to rate based on average impairment of earning capacity.

Also, the use of specific evaluative tests is the province of the medical specialist conducting the examination. So long as the examination report contains sufficient detail to rate the veteran's disability under the criteria in the regulation, it matters little which evaluative methods are used for the purposes of the rating schedule. For all these reasons, we make no change based on these comments.

Administration of Assessment

We received a number of comments about administering the regulation. Two of the commenters recommended that the rule be pilot tested in a large outcome study and be validated, standardized, etc. One felt that we should take into account time of day, familiarity with assessor, etc., and evaluate based on multiple sources. We discussed above the facts that multiple sources of information are considered in evaluating TBI and that the TBI regulations were developed based on multiple sources of information and in consultation with multiple TBI experts. Conducting the recommended studies would significantly delay the implementation of the regulation, which we believe should be expedited to the extent possible. However, VA regularly reviews the adequacy of the rating decisions issued by our regional offices, and if we encounter problems in the implementation of this regulation that can be fixed through subsequent revision of our regulations, then we will certainly take appropriate action in the future. We make no change based on these comments.

One commenter pointed out the need for training for examiners and the development of new examination templates with explicit instructions for each level of impairment. These are all planned but are not part of the regulation, and we make no change based on this comment.

Another commenter said that those proposing these ratings and regulations should be comprised of veterans suffering from TBI. This would be impractical since writing regulations is a highly technical undertaking that requires knowledge about the medical aspects of TBI, which are very complex, as well as knowledge about the legal aspects of regulations in general and rating schedule regulations in particular. This rulemaking was developed and written by medical and legal experts within VA who are knowledgeable about TBI in consultation with outside experts. In addition, Veterans, their caretakers, and the general public have had an opportunity to comment on the proposed regulation, and we are taking all comments into account. Therefore we make no change based on this comment.

Systematic Review of Regulation

Four commenters recommended that the TBI regulations be regularly reviewed and updated as medical information is updated. We agree that this is necessary and plan to do so.

Collaboration Among Various Groups of Experts

Several commenters recommended either more collaboration among civilian and military experts in TBI assessment and rehabilitation to ensure that veterans with TBI receive the highest quality of care or the establishment of an advisory committee to include experts in diagnosis and treatment, as well as vocational experts, who can provide a scientifically valid basis for the new regulation. Prior to developing the regulation, a series of conferences on TBI were held over a period of many months. The conferences included TBI experts from VA, the Department of Defense, and the non-governmental medical community. All aspects of TBI, including definition and diagnosis, disability assessment, treatment, family concerns, long-term care, testing methods, education and training, and research were thoroughly addressed. Those meetings provided extensive information on TBI that we carefully considered as we developed the regulations.

Another commenter recommended that VA form an employee workgroup to study and evaluate no fewer than 1,000 cases under the proposed regulation to determine whether the regulation is workable. This recommendation would be impractical to adopt because it would require us to delay implementing the regulation and would take substantial personnel time away from other duties, so we do not plan to adopt this recommendation. Once the regulation goes into effect, we will make adjustments to it if we find they are needed. However, we expect that with some training, which we are planning, raters will not find this regulation exceptionally difficult to apply.

Source of Information for Rating Determination

One commenter asked how a rater would obtain evidence to apply the cognitive impairment table and said that the veteran's recovery team should be queried, and another commenter asked who would be the source of information used to make the rating determination. As mentioned above, raters take into account all available medical evidence and other pertinent information. The report by the clinician who conducts the Compensation and Pension disability examination is a primary source of information. That clinician may incorporate into the examination report information received from individuals other than the veteran, including family members, caretakers, etc. Raters therefore receive an extensive amount of information to be used in making their determinations.

One of these commenters also recommended that we undertake health-service research to document the validity of the proposed rating constructs, inter-adjudicator reliability of the rating determinations and the actual versus predicted levels of disability. We have already addressed similar comments above and make no change in response to this comment.

Quality of Life (QOL)

One commenter said that disability ratings should reflect greater sensitivity to the potentially immense significance of any TBI-related impairment in terms of major loss in quality of life, regardless of how ''mild'' a symptom may appear to be on paper, and that VA should provide compensation for loss of QOL for all with TBI, including mild TBI. A second commenter also said that mild TBI should be compensated for QOL.

The current statutory requirement is that disability ratings be based on average impairment of earning capacity. However, VA has contracted for a study concerning issues related to quality of life in determining disability. We make no change based on these comments, pending the completion of that study and VA's review of the study and any recommendations made.

General Comments

One commenter expressed the hope that the use of this regulation will not be limited to soldiers with combat-related injuries. This regulation will apply to any veteran with residuals of a service-related TBI of any origin.

Another commenter said that grouping cognitive impairment, the subjective symptoms cluster, and emotional/behavioral disorders under one diagnostic code would be unfair to claimants, who might otherwise receive 3 separate ratings. Our intent is that mental disorders associated with TBI will not be evaluated under diagnostic code 8045 but under the mental disorders section of the rating schedule (§ 4.130). The subjective symptoms have been incorporated in the final rule into the table now titled ''Evaluation Of Cognitive Impairment And Other Residuals Of TBI Not Otherwise Classified.'' A single evaluation will be assigned based on this table, but each of the facets in it will be considered.

We proposed to determine the evaluation level based on this table by adding the 3 highest evaluation levels and dividing that sum by 3 to determine the overall evaluation. However, we have revised this method to prevent the dilution of the severity level of the highest rated disability that would occur if less disabling problems were taken into account in the evaluation, as we proposed. Therefore, we have revised the method to base the evaluation on the highest level assigned for any facet. This level will determine the overall evaluation under the table of 0, 10, 40, 70, or 100 percent. This method of determining the evaluation is an efficient way to take into account the major and most severe disabling effects of TBI.

Another commenter stated that the proposal should encourage participation in vocational rehabilitation. The rating schedule, which is a guide to the evaluation of disabilities, is not the appropriate document in which to discuss the potential or need for vocational rehabilitation, and we make no change based on this comment.

One commenter urged VA to recognize the multidimensional and complex aspects of brain injury and points out that a variety of health problems, such as hypopituitarism, that do not exist immediately after TBI, become evident later. The commenter further said that the short and long-term impacts of TBI are still unknown. These are important points, and VA will make adjustments to the TBI regulation as necessary based on developing medical information about long-term and delayed residuals of TBI. The regulation does indicate that endocrine dysfunction is one of the possible physical residuals of TBI, and the rating schedule contains criteria for the evaluation of endocrine disabilities, including pituitary dysfunction, in the endocrine section of the rating schedule (38 CFR 4.119).

The same commenter urged VA to err on the side of providing more, rather than less, compensation to veterans for reported TBI-related impairments. Regulations (38 CFR 4.3, ''Resolution of reasonable doubt'' and 38 CFR 3.102, ''Reasonable doubt'') require VA to administer the law under a broad interpretation, consistent, however, with the facts shown in every case, and when there is a reasonable doubt regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. This is a guiding principle in all VA rating determinations. We also believe that the revisions to the proposed schedule, reflected in this final rule, will tend to result in awards of more, rather than less, compensation in individual cases.

Sua Sponte Reviews and Effective Date

We received several comments regarding the applicability date of the revised regulation and rating reviews under the new criteria. One commenter stated that VA should provide *sua sponte* reviews under the new criteria for all cases with service-connected TBI residuals. The commenter felt that the proposal would have required veterans to take affirmative action to request review, and many veterans will not know to do this or are too impaired to take such action. Additionally, the commenter stated that VA's undertaking review on its own initiative would result in an earlier effective date of any increase in compensation compared to review undertaken at a veteran's request.

The commenter also said that VA's proposal would create two classes of TBI ratings, some under the current criteria and some under the new criteria, which is inequitable. The commenter continued, if VA applies the new rating criteria to all TBI cases, they would all be rated uniformly under the same criteria.

A commenter stated that there should be a clause in the proposed regulation to direct raters not to reduce ratings under the new criteria. The commenter felt that no veterans who currently have service-connected TBI residuals should be adversely impacted by the rating criteria change.

A commenter stated that the proposed applicability of the revised rating criteria to all applications for benefits received by VA on or after the effective date of this rule is too restrictive and appears to violate 38 U.S.C. 5110 for claims pending on the date of enactment. Furthermore, given the nature of TBI, it is too burdensome to require veterans with TBI to request review. The commenter thought that claims filed on or after October 7, 2001, should be reviewed for readjudication

under the revised regulation. At a minimum, the commenter continued, veterans who currently have service-connected TBI should be notified of the change and offered a simple form to use if they wish to request review.

Another commenter stated that it is unfair to apply the old rating criteria to pending claims. It was suggested that the new criteria apply to claims and appeals pending on the date of publication of the new rule.

VA is applying this rating schedule change prospectively. It would be unfair to veterans to apply new criteria to examinations and medical evidence produced under prior guidance. As stated, we are revising our training and examination templates based on our new criteria. The applicability date and review guidance we are providing will allow veterans to be re-rated with new examinations that conform to the new criteria to ensure an adequate rating is provided. An effective date of a higher rating under the criteria would not be available prior to the effective date of the new criteria, as the new criteria did not exist prior to that date. It is unlikely that a veteran would receive a lower rating under the new criteria; however, consistent with 38 U.S.C. 1155, any review under the new criteria will not result in a reduction in a veteran's disability rating unless the veteran's disability is shown to have improved. We will provide outreach to ensure that all affected veterans are informed of the new criteria and the availability of re-rating under the new criteria. However, that is separate from what is included in the regulation. We are therefore making no changes based on these comments.

Additional Changes

In addition to adding the note defining ''instrumental activities of daily living,'' we made other changes in the notes under diagnostic code 8045. We revised proposed note (1), which directed how to evaluate when both cognitive impairment and one or more comorbid mental disorders are present, by expanding the instructions to include the situation when there is overlap of manifestations of the conditions evaluated under the table titled ''Evaluation Of Cognitive Impairment and Other Residuals Of TBI Not Otherwise Classified'' with not only a comorbid mental disorder but also with a neurologic or other physical disorder that can be separately evaluated under another diagnostic code. It states that if the manifestations of two or more conditions cannot be clearly separated, a single evaluation should be assigned under whichever set of diagnostic criteria allows the better assessment of overall impaired functioning due to both conditions, but if the manifestations are clearly separable, a separate evaluation should be assigned for each condition. This revision provides more comprehensive guidance to raters than the proposed note.

We have removed proposed note (2), which directed how to evaluate when both cognitive impairment and the symptoms cluster were present. This direction is no longer necessary since we have included cognitive impairment and subjective symptoms in the same rating table. We replaced proposed note (2) with new note (2), which states, for the sake of clarity, that symptoms listed at certain evaluation levels in the table are only examples and are not symptoms that must be present in order to assign a particular evaluation.

We also removed proposed note (3), which referred to the evaluation of subjective symptoms and cognitive impairment and is no longer pertinent. It directed that evaluation be made under the set of criteria that is most in accord with the residuals, whatever the original classification of the level of severity of the TBI. We replaced this with new note (3), concerning instrumental activities of daily living, as described above.

We made no change to the content of proposed note (4) concerning review of ratings for TBI made under the criteria effective before the effective date of this final regulation. However, we moved this content to new note (5).

We added new note (4), which states that the terms ''mild,'' ''moderate,'' and ''severe,'' which may appear in medical records, refer to a classification of TBI made at, or close to, the time of injury rather than to the current level of functioning and that this classification does not affect the rating assigned under diagnostic code 8045. This is a restatement of material in the proposed rule that was under diagnostic code 8045.

We edited language under diagnostic code 8045 and reorganized some of it for the sake of clarity and to comport with the revised evaluation criteria. For example, we removed all references to the proposed set of evaluation criteria for subjective symptoms clusters, which are no longer needed. To avoid confusion, we also added a statement that the evaluation assigned based on the ''Evaluation Of Cognitive Impairment And Other Residuals Of TBI Not Otherwise Classified'' table will be considered the evaluation for a single condition for purposes of combining with other disability evaluations.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the changes noted.

We are additionally adding updates to 38 CFR part 4, Appendices A, B, and C, to reflect changes to the TBI rating criteria made by this rulemaking. The appendices are tools for users of the Schedule for Rating Disabilities and do not contain substantive content regarding evaluation of disabilities. As such, we believe it is appropriate to include these updates in this final rule.

Benefits Costs

None of the changes to the proposed rule will alter the estimated costs provided in the previous Notice of Proposed Rulemaking.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action 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.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: August 22, 2008.

James B. Peake,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. In § 4.124a, in the table titled ''Organic Diseases of the Central Nervous System,'' the entry for 8045 is revised in its entirety and a new table titled ''Evaluation of Cognitive Impairment And Other Residuals of TBI Not Otherwise Classified'' is added after the ''Organic Diseases of the Central Nervous System'' table, to read as follows:

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

* * * * *

ORGANIC DISEASES OF THE CENTRAL NERVOUS SYSTEM

	Rating
* * * * * * *	
8045 Residuals of traumatic brain injury (TBI):	
There are three main areas of dysfunction that may result from TBI and have profound effects on functioning: cognitive (which is common in varying degrees after TBI), emotional/behavioral, and physical. Each of these areas of dysfunction may require evaluation.	
Cognitive impairment is defined as decreased memory, concentration, attention, and executive functions of the brain. Executive functions are goal setting, speed of information processing, planning, organizing, prioritizing, self-monitoring, problem solving, judgment, decision making, spontaneity, and flexibility in changing actions when they are not productive. Not all of these brain functions may be affected in a given individual with cognitive impairment, and some functions may be affected more severely than others. In a given individual, symptoms may fluctuate in severity from day to day. Evaluate cognitive impairment under the table titled ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified.''	
Subjective symptoms may be the only residual of TBI or may be associated with cognitive impairment or other areas of dysfunction. Evaluate subjective symptoms that are residuals of TBI, whether or not they are part of cognitive impairment, under the subjective symptoms facet in the table titled ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified.'' However, separately evaluate any residual with a distinct diagnosis that may be evaluated under another diagnostic code, such as migraine headache or Meniere's disease, even if that diagnosis is based on subjective symptoms, rather than under the ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified'' table.	
Evaluate emotional/behavioral dysfunction under § 4.130 (Schedule of ratings—mental disorders) when there is a diagnosis of a mental disorder. When there is no diagnosis of a mental disorder, evaluate emotional/behavioral symptoms under the criteria in the table titled ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified.''	
Evaluate physical (including neurological) dysfunction based on the following list, under an appropriate diagnostic code: Motor and sensory dysfunction, including pain, of the extremities and face; visual impairment; hearing loss and tinnitus; loss of sense of smell and taste; seizures; gait, coordination, and balance problems; speech and other communication difficulties, including aphasia and related disorders, and dysarthria; neurogenic bladder; neurogenic bowel; cranial nerve dysfunctions; autonomic nerve dysfunctions; and endocrine dysfunctions.	
The preceding list of types of physical dysfunction does not encompass all possible residuals of TBI. For residuals not listed here that are reported on an examination, evaluate under the most appropriate diagnostic code. Evaluate each condition separately, as long as the same signs and symptoms are not used to support more than one evaluation, and combine under § 4.25 the evaluations for each separately rated condition. The evaluation assigned based on the ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified'' table will be considered the evaluation for a single condition for purposes of combining with other disability evaluations.	
Consider the need for special monthly compensation for such problems as loss of use of an extremity, certain sensory impairments, erectile dysfunction, the need for aid and attendance (including for protection from hazards or dangers incident to the daily environment due to cognitive impairment), being housebound, etc.	

ORGANIC DISEASES OF THE CENTRAL NERVOUS SYSTEM—Continued

	Rating
Evaluation of Cognitive Impairment and Subjective Symptoms	
The table titled ''Evaluation of Cognitive Impairment and Other Residuals of TBI Not Otherwise Classified'' contains 10 important facets of TBI related to cognitive impairment and subjective symptoms. It provides criteria for levels of impairment for each facet, as appropriate, ranging from 0 to 3, and a 5th level, the highest level of impairment, labeled ''total.'' However, not every facet has every level of severity. The Consciousness facet, for example, does not provide for an impairment level other than ''total,'' since any level of impaired consciousness would be totally disabling. Assign a 100-percent evaluation if ''total'' is the level of evaluation for one or more facets. If no facet is evaluated as ''total,'' assign the overall percentage evaluation based on the level of the highest facet as follows: 0 = 0 percent; 1 = 10 percent; 2 = 40 percent; and 3 = 70 percent. For example, assign a 70 percent evaluation if 3 is the highest level of evaluation for any facet. **Note (1):** There may be an overlap of manifestations of conditions evaluated under the table titled ''Evaluation Of Cognitive Impairment And Other Residuals Of TBI Not Otherwise Classified'' with manifestations of a comorbid mental or neurologic or other physical disorder that can be separately evaluated under another diagnostic code. In such cases, do not assign more than one evaluation based on the same manifestations. If the manifestations of two or more conditions cannot be clearly separated, assign a single evaluation under whichever set of diagnostic criteria allows the better assessment of overall impaired functioning due to both conditions. However, if the manifestations are clearly separable, assign a separate evaluation for each condition. **Note (2):** Symptoms listed as examples at certain evaluation levels in the table are only examples and are not symptoms that must be present in order to assign a particular evaluation. **Note (3):** ''Instrumental activities of daily living'' refers to activities other than self-care that are needed for independent living, such as meal preparation, doing housework and other chores, shopping, traveling, doing laundry, being responsible for one's own medications, and using a telephone. These activities are distinguished from ''Activities of daily living,'' which refers to basic self-care and includes bathing or showering, dressing, eating, getting in or out of bed or a chair, and using the toilet. **Note (4):** The terms ''mild,'' ''moderate,'' and ''severe'' TBI, which may appear in medical records, refer to a classification of TBI made at, or close to, the time of injury rather than to the current level of functioning. This classification does not affect the rating assigned under diagnostic code 8045 **Note (5):** A veteran whose residuals of TBI are rated under a version of § 4.124a, diagnostic code 8045, in effect before October 23, 2008 may request review under diagnostic code 8045, irrespective of whether his or her disability has worsened since the last review. VA will review that veteran's disability rating to determine whether the veteran may be entitled to a higher disability rating under diagnostic code 8045. A request for review pursuant to this note will be treated as a claim for an increased rating for purposes of determining the effective date of an increased rating awarded as a result of such review; however, in no case will the award be effective before October 23, 2008. For the purposes of determining the effective date of an increased rating awarded as a result of such review, VA will apply 38 CFR 3.114, if applicable.	

* * * * * * *

EVALUATION OF COGNITIVE IMPAIRMENT AND OTHER RESIDUALS OF TBI NOT OTHERWISE CLASSIFIED

Facets of cognitive impairment and other residuals of TBI not otherwise classified	Level of impairment	Criteria
Memory, attention, concentration, executive functions.	0	No complaints of impairment of memory, attention, concentration, or executive functions.
	1	A complaint of mild loss of memory (such as having difficulty following a conversation, recalling recent conversations, remembering names of new acquaintances, or finding words, or often misplacing items), attention, concentration, or executive functions, but without objective evidence on testing.
	2	Objective evidence on testing of mild impairment of memory, attention, concentration, or executive functions resulting in mild functional impairment.
	3	Objective evidence on testing of moderate impairment of memory, attention, concentration, or executive functions resulting in moderate functional impairment.
	Total	Objective evidence on testing of severe impairment of memory, attention, concentration, or executive functions resulting in severe functional impairment.
Judgment	0	Normal.
	1	Mildly impaired judgment. For complex or unfamiliar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision.
	2	Moderately impaired judgment. For complex or unfamiliar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision, although has little difficulty with simple decisions.
	3	Moderately severely impaired judgment. For even routine and familiar decisions, occasionally unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision.
	Total	Severely impaired judgment. For even routine and familiar decisions, usually unable to identify, understand, and weigh the alternatives, understand the consequences of choices, and make a reasonable decision. For example, unable to determine appropriate clothing for current weather conditions or judge when to avoid dangerous situations or activities.

EVALUATION OF COGNITIVE IMPAIRMENT AND OTHER RESIDUALS OF TBI NOT OTHERWISE CLASSIFIED—Continued

Facets of cognitive impairment and other residuals of TBI not otherwise classified	Level of impairment	Criteria
Social interaction	0	Social interaction is routinely appropriate.
	1	Social interaction is occasionally inappropriate.
	2	Social interaction is frequently inappropriate.
	3	Social interaction is inappropriate most or all of the time.
Orientation	0	Always oriented to person, time, place, and situation.
	1	Occasionally disoriented to one of the four aspects (person, time, place, situation) of orientation.
	2	Occasionally disoriented to two of the four aspects (person, time, place, situation) of orientation or often disoriented to one aspect of orientation.
	3	Often disoriented to two or more of the four aspects (person, time, place, situation) of orientation.
	Total	Consistently disoriented to two or more of the four aspects (person, time, place, situation) of orientation.
Motor activity (with intact motor and sensory system).	0	Motor activity normal.
	1	Motor activity normal most of the time, but mildly slowed at times due to apraxia (inability to perform previously learned motor activities, despite normal motor function).
	2	Motor activity mildly decreased or with moderate slowing due to apraxia.
	3	Motor activity moderately decreased due to apraxia.
	Total	Motor activity severely decreased due to apraxia.
Visual spatial orientation	0	Normal.
	1	Mildly impaired. Occasionally gets lost in unfamiliar surroundings, has difficulty reading maps or following directions. Is able to use assistive devices such as GPS (global positioning system).
	2	Moderately impaired. Usually gets lost in unfamiliar surroundings, has difficulty reading maps, following directions, and judging distance. Has difficulty using assistive devices such as GPS (global positioning system).
	3	Moderately severely impaired. Gets lost even in familiar surroundings, unable to use assistive devices such as GPS (global positioning system).
	Total	Severely impaired. May be unable to touch or name own body parts when asked by the examiner, identify the relative position in space of two different objects, or find the way from one room to another in a familiar environment.
Subjective symptoms	0	Subjective symptoms that do not interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples are: mild or occasional headaches, mild anxiety.
	1	Three or more subjective symptoms that mildly interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples of findings that might be seen at this level of impairment are: intermittent dizziness, daily mild to moderate headaches, tinnitus, frequent insomnia, hypersensitivity to sound, hypersensitivity to light.
	2	Three or more subjective symptoms that moderately interfere with work; instrumental activities of daily living; or work, family, or other close relationships. Examples of findings that might be seen at this level of impairment are: marked fatigability, blurred or double vision, headaches requiring rest periods during most days.
Neurobehavioral effects	0	One or more neurobehavioral effects that do not interfere with workplace interaction or social interaction. Examples of neurobehavioral effects are: Irritability, impulsivity, unpredictability, lack of motivation, verbal aggression, physical aggression, belligerence, apathy, lack of empathy, moodiness, lack of cooperation, inflexibility, and impaired awareness of disability. Any of these effects may range from slight to severe, although verbal and physical aggression are likely to have a more serious impact on workplace interaction and social interaction than some of the other effects.
	1	One or more neurobehavioral effects that occasionally interfere with workplace interaction, social interaction, or both but do not preclude them.
	2	One or more neurobehavioral effects that frequently interfere with workplace interaction, social interaction, or both but do not preclude them.
	3	One or more neurobehavioral effects that interfere with or preclude workplace interaction, social interaction, or both on most days or that occasionally require supervision for safety of self or others.
Communication	0	Able to communicate by spoken and written language (expressive communication), and to comprehend spoken and written language.
	1	Comprehension or expression, or both, of either spoken language or written language is only occasionally impaired. Can communicate complex ideas.
	2	Inability to communicate either by spoken language, written language, or both, more than occasionally but less than half of the time, or to comprehend spoken language, written language, or both, more than occasionally but less than half of the time. Can generally communicate complex ideas.
	3	Inability to communicate either by spoken language, written language, or both, at least half of the time but not all of the time, or to comprehend spoken language, written language, or both, at least half of the time but not all of the time. May rely on gestures or other alternative modes of communication. Able to communicate basic needs.
	Total	Complete inability to communicate either by spoken language, written language, or both, or to comprehend spoken language, written language, or both. Unable to communicate basic needs.

EVALUATION OF COGNITIVE IMPAIRMENT AND OTHER RESIDUALS OF TBI NOT OTHERWISE CLASSIFIED—Continued

Facets of cognitive impairment and other residuals of TBI not otherwise classified	Level of impairment	Criteria
Consciousness	Total	Persistently altered state of consciousness, such as vegetative state, minimally responsive state, coma.

* * * * *

■ 3. In Appendix A to Part 4, § 4.124a, add diagnostic code 8045 in numerical order to the table to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

* * * * *

Sec.	Diagnostic code No.	
*	*	* * *
4.124a	8045	Criterion and evaluation October 23, 2008.
*	*	* * *

* * * * *

■ 4. In Appendix B to Part 4, diagnostic code 8045 is revised to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

* * * * *

Diagnostic code No.	
*	* * * *
8045	Residuals of traumatic brain injury (TBI).
*	* * * *

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■ 5. In Appendix C to Part 4 under the heading for ''Brain'' remove ''Disease due to trauma'' and its diagnostic code ''8045''; and add in alphabetical order a new heading ''Traumatic brain injury residuals'' and its diagnostic code ''8045''.

[FR Doc. E8–22083 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AM55

Schedule for Rating Disabilities; Evaluation of Scars

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Schedule that addresses the Skin, so that it more clearly reflects our policies concerning the evaluation of scars.

DATES: *Effective Date:* This amendment is effective October 23, 2008.

Applicability Date: This amendment shall apply to all applications for benefits received by VA on or after October 23, 2008. A veteran whom VA rated before such date under diagnostic codes 7800, 7801, 7802, 7803, 7804, or 7805 of 38 CFR 4.118 may request review under these clarified criteria, irrespective of whether his or her disability has worsened since the last review. The effective date of any award, or any increase in disability compensation, based on this amendment will not be earlier than the effective date of this rule, but will otherwise be assigned under the current regulations regarding effective dates, 38 CFR 3.400, etc.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 319–5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 3, 2008, VA published in the **Federal Register** (73 FR 428) a proposal to amend those portions of the Schedule for Rating Disabilities that address the Skin, 38 CFR 4.118, by revising the guidelines for the evaluation of scars. Interested persons were invited to submit written comments on or before February 4, 2008. We received comments from the National Organization of Veterans' Advocates, Inc. (NOVA), and Disabled American Veterans (DAV).

NOVA's Comment

NOVA addressed a proposed change to a note in diagnostic code 7801 that would consider the trunk as one area of the body. Currently, the note in diagnostic code 7801 directs that scars on widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated. We proposed to revise this note to clarify that if multiple scars are present, VA will assign a separate evaluation for each affected extremity based on the total area of the qualifying scars on that extremity, and assign a separate evaluation for the trunk based on the total area of the qualifying scars on the trunk. Qualifying scars under diagnostic code 7801 are deep scars that are not located on the head, face, or neck.

NOVA is concerned that the proposed change will not adequately compensate veterans for scars of the trunk. NOVA stated the rationale for the change of ensuring that the area of all deep scars of the trunk are taken into account was inadequate considering that the anterior and posterior surfaces of the trunk may be the largest separate and distinct areas of the body.

Second, NOVA stated that a scar can cross over into more than one separate area of the body. In the proposed rule, we stated that such a scar would be treated as two separate scars to ensure that the ratings reflect the disability to each distinct area of the body.

Third, NOVA stated the proposed change would potentially result in a lower evaluation for a veteran with one scar that covers both the anterior and posterior trunk. NOVA offers the following example: A veteran has one 30 inch scar that wraps around his anterior and posterior trunk, with 15 square inches on the anterior side and 15 square inches on his posterior side. Under the current diagnostic code, this scar would be rated separately at 20 percent and 20 percent, for a combined evaluation of 40 percent. Under the proposed change, the veteran would be

entitled to one evaluation for a 30 inch scar of 20 percent.

Fourth, NOVA comments that under the proposed change a veteran who has two scars, one on his posterior trunk and one on his anterior trunk, would only receive one rating for that area; we would not rate each scar separately, and then provide a combined rating. The effect could potentially be a lower rating under the revised rule than the veteran would receive under the current rule.

Response

We did not intend in the proposed regulation to produce a lower evaluation for scars of the trunk, and we agree that this could happen under the criteria we proposed. While in the proposed regulation we considered the trunk to be a single location for purposes of evaluating multiple scars, after further consideration, we have made changes in the final rule indicating that the anterior and posterior portions of the trunk represent separate locations for purposes of evaluation. With that change, separate evaluations can be assigned for the total area of qualifying scars of each extremity, for the total area of qualifying scars of the anterior portion of the trunk, and for the total area of qualifying scars of the posterior portion of the trunk. Accordingly, we have changed the first sentence of proposed note 2 under diagnostic codes 7801 and 7802 to direct raters, if multiple scars are present, or if a single scar affects more than one extremity, or a single scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single scar affects both the anterior portion and the posterior portion of the trunk, to assign a separate evaluation based on the total area of qualifying scars of each affected extremity, the total area of qualifying scars of the anterior portion of the trunk, if affected, and the total area of the qualifying scars of the posterior portion of the trunk, if affected.

We have also added a statement in note 2 of diagnostic codes 7801 and 7802 clarifying the borders of the anterior (ventral) and posterior (dorsal) portions of the trunk, in order to avoid confusion about scars that may be reported as being on the lateral aspects of the trunk. It states that the midaxillary line on each side separates the anterior and posterior portions of the trunk. Therefore, all portions of the trunk are designated as either ''anterior'' or ''posterior,'' based on their relationship to the midaxillary line, and there is no portion that is designated ''lateral.''

We revised note 2 of diagnostic code 7802 to be identical to note 2 of diagnostic code 7801. These notes address the same concept and the identical language will make the notes easier to use. We are also making minor technical changes to improve the clarity of both notes.

DAV's Comments

Method of Measurement

DAV commented that while they agreed with the amendment to the areas of scars, they were concerned that the method of measurement was not specifically stated in the regulation. DAV stated that the diagnostic code provides evaluations for square inches. However, scars are often oddly shaped. DAV proposed that the area of a scar be measured based on the shape of a rectangle from the top of the scar to the bottom of the scar for the height measurement, and from the farthest side points of the scar for the width. According to DAV, this method of measurement would result in more accurate measurements and more consistent disability ratings. DAV believes it is difficult for examiners and adjudicators to determine the surface area in square inches for oddly shaped scars.

Response

We make no change based on this comment. We note that the current regulation does not specify a method of measurement, and this has not created difficulty for medical professionals who are responsible for measuring scars. Using the ''rectangular area'' method described by DAV would inappropriately overestimate the area of scars that are hourglass-shaped, with the narrow area being very long and thin, and other scars where one portion is much thinner than another. Measuring as a rectangle in such cases could lead to possible inaccuracies in evaluation. Measuring the actual surface area, as required by the rule, will not lead to such inaccuracies; additionally, it is impractical to set forth all of the methods that can be used to measure scars of various shapes and sizes. No two scars are identical, and different measuring techniques must be employed based on the size, shape, and location of a particular scar. Relying on medical professionals who measure and describe scars in VA medical examinations and on evidence contained in medical records is more likely to produce accurate measurements than a general rule such as the one proposed by DAV. As such, it would not be helpful to revise the regulation to specify a method of measuring scars.

Diagnostic Code 7801 Note 2 Preamble

DAV stated that the discussion of proposed diagnostic code 7801 note 2 in the preamble of our notice of proposed rulemaking states that scars may run into two separate areas and each area should be separately evaluated. However, DAV stated that the note itself does not state this. DAV believes that VA should ensure that this concept is included in the note to ensure scars are properly evaluated.

Response

We agree that note 2 can be clearer on this point. Our revision to note 2 discussed above will include a revision based on this comment. Additionally, for clarity and as part of the revision based on the separate comment, we will make the same revision to note 2 of diagnostic code 7802.

Diagnostic Code 7801 Note 2 Separate Ratings

DAV additionally stated that the proposed criterion that requires adjudicators to award separate ratings for a scar that runs into two separate areas, for example the trunk and left arm, may be less beneficial to veterans in some cases. DAV stated that a veteran with a scar of 12 square inches: 11 square inches on the trunk and 1 square inch on the left arm, would receive a 10 percent evaluation for the trunk and 0 percent evaluation for the left arm, which combine to 10 percent. If the 12 square inch scar was solely on the trunk, the veteran receives a 20 percent evaluation. DAV believes that adjudicators should be able to award either a single rating for the combined surface area of a scar that runs into two separate areas, or separate ratings, whichever results in the higher rating.

Response

We make no change based on this comment. We note that the requirement to separately evaluate scars on separate areas of the body is not a new requirement; our proposed language merely clarifies already existing evaluation methods. Further, we evaluate separate areas of the body to compensate for functional loss of the different areas of the body separately. In the example mentioned by DAV, the veteran has an 11 square inch scar of the trunk versus a 12 square inch scar of the trunk, which require different evaluations because the 12 square inch scar could lead to greater functional loss of the trunk. VA's ratings are based on the average impairment to earning

capacity caused by service-connected disabilities. 38 U.S.C. 1155. Each area of the body identified in the rule has a separate and distinct function; therefore, a scar that affects a single area of the body is less likely to produce greater overall disability than a similar scar that affects more than one area of the body. For this reason, we will rate the separate areas of the body separately. Although DAV suggests that assigning separate ratings for each affected body part may be less favorable to claimants in certain circumstances than assigning only one rating for each scar that affects more than one body part, we believe that assigning separate ratings for each affected body part generally will be beneficial to claimants and, moreover, more closely comports with the purpose of assigning ratings based on functional loss.

We made an additional change to the title of diagnostic code 7800 for the sake of clarity. To avoid any possible confusion about whether it refers to burn scars, scars due to other causes, or disfigurement only of the head, face, or neck, or also to scars or disfigurement in other areas, we clarified the title by changing it to ''Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck''. This eliminates any possible confusion about the purpose of this diagnostic code but does not represent a substantive change from the proposed regulation.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with the changes noted.

We are additionally adding updates to 38 CFR part 4, Appendices A, B, and C, to reflect changes to the diagnostic criteria for scars made by this rulemaking. The appendices are tools for users of the Schedule for Rating Disabilities and do not contain substantive content regarding evaluation of disabilities. As such, we believe it is appropriate to include these updates in this final rule.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action 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.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: June 20, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. Section 4.118 is amended by:

■ a. Adding an introductory paragraph.

■ b. Revising the heading to diagnostic code 7800 and adding new notes (4) and (5).

■ c. Revising diagnostic codes 7801, 7802, 7804, and 7805.

■ d. Removing diagnostic code 7803.

The additions and revisions read as follows:

§ 4.118 Schedule of ratings—skin.

A veteran who VA rated under diagnostic codes 7800, 7801, 7802, 7803, 7804, or 7805 before October 23, 2008 can request review under diagnostic codes 7800, 7801, 7802, 7804, and 7805, irrespective of whether the veteran's disability has increased since the last review. VA will review that veteran's disability rating to determine whether the veteran may be entitled to a higher disability rating under diagnostic codes 7800, 7801, 7802, 7804, and 7805. A request for review pursuant to this rulemaking will be treated as a claim for an increased rating for purposes of determining the effective date of an increased rating awarded as a result of such review; however, in no case will the award be effective before October 23, 2008.

	Rating
7800 Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck:	
* * * * * * *	
Note (4): Separately evaluate disabling effects other than disfigurement that are associated with individual scar(s) of the head, face, or neck, such as pain, instability, and residuals of associated muscle or nerve injury, under the appropriate diagnostic code(s) and apply § 4.25 to combine the evaluation(s) with the evaluation assigned under this diagnostic code.	
Note (5): The characteristic(s) of disfigurement may be caused by one scar or by multiple scars; the characteristic(s) required to assign a particular evaluation need not be caused by a single scar in order to assign that evaluation.	
7801 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear:	
Area or areas of 144 square inches (929 sq. cm.) or greater	40
Area or areas of at least 72 square inches (465 sq. cm.) but less than 144 square inches (929 sq. cm.)	30
Area or areas of at least 12 square inches (77 sq. cm.) but less than 72 square inches (465 sq. cm.)	20
Area or areas of at least 6 square inches (39 sq. cm.) but less than 12 square inches (77 sq. cm.)	10
Note (1): A deep scar is one associated with underlying soft tissue damage..	
Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under § 4.25. Qualifying scars are scars that are nonlinear, deep, and are not located on the head, face, or neck.	
7802 Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear:	
Area or areas of 144 square inches (929 sq. cm.) or greater	10
Note (1): A superficial scar is one not associated with underlying soft tissue damage.	
Note (2): If multiple qualifying scars are present, or if a single qualifying scar affects more than one extremity, or a single qualifying scar affects one or more extremities and either the anterior portion or posterior portion of the trunk, or both, or a single qualifying scar affects both the anterior portion and the posterior portion of the trunk, assign a separate evaluation for each affected extremity based on the total area of the qualifying scars that affect that extremity, assign a separate evaluation based on the total area of the qualifying scars that affect the anterior portion of the trunk, and assign a separate evaluation based on the total area of the qualifying scars that affect the posterior portion of the trunk. The midaxillary line on each side separates the anterior and posterior portions of the trunk. Combine the separate evaluations under § 4.25. Qualifying scars are scars that are nonlinear, superficial, and are not located on the head, face, or neck.	
7804 Scar(s), unstable or painful:	
Five or more scars that are unstable or painful	30
Three or four scars that are unstable or painful	20
One or two scars that are unstable or painful	10
Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar..	
Note (2): If one or more scars are both unstable and painful, add 10 percent to the evaluation that is based on the total number of unstable or painful scars.	
Note (3): Scars evaluated under diagnostic codes 7800, 7801, 7802, or 7805 may also receive an evaluation under this diagnostic code, when applicable.	
7805 Scars, other (including linear scars) and other effects of scars evaluated under diagnostic codes 7800, 7801, 7802, and 7804:	
Evaluate any disabling effect(s) not considered in a rating provided under diagnostic codes 7800–04 under an appropriate diagnostic code.	

* * * * *

■ 3. In Appendix A to Part 4, § 4.118 revise diagnostic codes 7800, through 7804 and add diagnostic code 7805 to read as follows:

Appendix A to Part 4—Table of Amendments and Effective Dates Since 1946

Sec.	Diagnostic code No.	
*	*	* * * * * * *
4.118	7800	Evaluation August 30, 2002; criterion October 23, 2008.
	7801	Criterion July 6, 1950; criterion August 30, 2002; criterion October 23, 2008.
	7802	Criterion September 22, 1978; criterion August 30, 2002; criterion October 23, 2008.
	7803	Criterion August 30, 2002; removed October 23, 2008.
	7804	Criterion July 6, 1950; criterion September 22, 1978; criterion and evaluation October 23, 2008.
	7805	Criterion October 23, 2008.
*	*	* * * * * * *

■ 4. In Appendix B to Part 4 remove diagnostic code 7803 and its disability entry and revise the disability entries for diagnostic codes 7800, 7801, 7802, 7804, and 7805 to read as follows:

Appendix B to Part 4—Numerical Index of Disabilities

Diagnostic code No.	
	THE SKIN
*	* * * * * *
7800	Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck.
7801	Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear.
7802	Burn scar(s) or scar(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear.
7804	Scar(s), unstable or painful.
7805	Scars, other.
*	* * * * * *

■ 5. In Appendix C to Part 4, revise the disability entries immediately following the heading ''Scars:'' to read as follows:

Appendix C to Part 4—Alphabetical Index of Disabilities

	Diagnostic code No.
* * * * * * *	
Scars:	
Burn scar(s) of the head, face, or neck; scar(s) of the head, face, or neck due to other causes; or other disfigurement of the head, face, or neck	7800
Burn scar(s) or scars(s) due to other causes, not of the head, face, or neck, that are deep and nonlinear	7801
Burn scar(s) or scars(s) due to other causes, not of the head, face, or neck, that are superficial and nonlinear	7802
Other	7805
Retina	6011
Unstable or painful	7804
* * * * * * *	

[FR Doc. E8–21980 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Marking Requirements for Parcel Select

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the marking requirements of our Shipping Services product, Parcel Select®. On May 21, 2008, we published in the **Federal Register** (Volume 73, Number 99) the proposed rule describing Parcel Select marking changes. This final rule revises the effective date to October 9, 2008 (proposed rule date was September 30, 2008) when Parcel Select shippers must use one of the following markings, as appropriate, on each Parcel Select package:

- For all destination entry packages, use ''Parcel Select''.
- For BMC presort entry packages, use ''Parcel Select BMC Presort'' or ''Parcel Select BMC PRSRT''.
- For OBMC presort entry packages (Inter-BMC) packages, use ''Parcel Select OBMC Presort'' or ''Parcel Select OBMC PRSRT''.
- For barcoded Intra-BMC and barcoded Inter-BMC packages, use ''Parcel Select Barcoded'' or ''Parcel Select BC''.

DATES: *Effective Date:* October 9, 2008.

FOR FURTHER INFORMATION CONTACT: Bert Olsen at 202–268–7276.

SUPPLEMENTARY INFORMATION:

Comments

There were no comments received on the May 21, 2008 proposed rule.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

* * * * *

400 Commercial Mail Parcels

* * * * *

402 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Markings

* * * * *

2.2 Parcel Select, Bound Printed Matter, Media Mail, and Library Mail Markings

2.2.1 Basic Markings

[*Revise the text of 2.2.1 as follows:*]

The basic required marking (e.g., ''Parcel Select'', ''Bound Printed Matter'', ''Media Mail'', ''Library Mail'')

must be printed on each piece claimed at the respective price. The basic required marking must be placed in the postage area (printed or produced as part of, or directly below or to the left of, the permit imprint indicia or meter stamp or impression). Optionally, the basic required marking may be printed on the shipping address label as service indicators composed of a service icon and service banner (see Exhibit 2.2.1):

a. The service icon that identifies the marking will be a 1-inch solid black square. If the service icon is used, it must appear in the upper left corner of the shipping label.

b. The service banner must appear directly below the postage payment area and the service icon, and it must extend across the shipping label. If the service banner is used, the appropriate marking (e.g., ''PARCEL SELECT'', ''MEDIA MAIL'') must be preceded by the text ''USPS'' and must be printed in minimum 20-point bold sans serif typeface, uppercase letters, centered within the banner, and bordered above and below by minimum 1-point separator lines. There must be a 1/16-inch clearance above and below the text.

[*Revise the heading of exhibit 2.2.1 as follows:*]

Exhibit 2.2.1 Marking Indicator Examples

[*Revise Exhibit 2.2.1 by replacing ''USPS PARCEL POST'' WITH ''USPS PARCEL SELECT''.*]

2.2.2 Parcel Select Markings

[*Revise the text in 2.2.2 as follows:*]

Each piece in a Parcel Select mailing must bear a price marking. Markings must appear in either the postage area described in 2.2.1 or in the address area on the line directly above or two lines above the address if the marking appears alone (when no other information appears on that line). The ''Parcel Post'' marking is not allowed on any Parcel Select mailpiece. The following product markings are required:

a. Destination Entry—''Parcel Select''.

b. BMC Presort—''Parcel Select BMC Presort'' or ''Parcel Select BMC PRSRT''.

c. OBMC Presort (Inter-BMC)—''Parcel Select OBMC Presort'' or ''Parcel Select OBMC PRSRT''.

d. Barcoded Intra-BMC and Barcoded Inter-BMC—''Parcel Select Barcoded'' or ''Parcel Select BC''.

[*Delete 2.2.3 in its entirety and renumber current 2.2.4 through 2.2.7 as 2.2.3 through 2.2.6*]

* * * * *

450 Parcel Select

* * * * *

455 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.8 Parcel Select Markings

[*Revise text of 1.8 as follows:*]

Each piece in a Parcel Select mailing must bear a price marking. Markings must appear in either the postage area described in 402.2.2.1 or in the address area on the line directly above or two lines above the address if the marking appears alone (when no other information appears on that line). The ''Parcel Post'' marking is not allowed on any Parcel Select mailpiece. The following product markings are required:

a. Destination Entry—''Parcel Select''.

b. BMC Presort—''Parcel Select BMC Presort'' or ''Parcel Select BMC PRSRT''.

c. OBMC Presort (Inter-BMC)—''Parcel Select OBMC Presort'' or ''Parcel Select OBMC PRSRT''.

d. Barcoded Intra-BMC and Barcoded Inter-BMC—''Parcel Select Barcoded'' or ''Parcel Select BC''.

* * * * *

Neva Watson,

Attorney, Legislative.

[FR Doc. E8–22075 Filed 9–22–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0455; SW–FRL–8713–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to add the name of Structural Metals, Inc, to the exclusion granted to Conversion Systems Inc., (CSI) on June 13, 1995. As described in the exclusion issued to CSI in paragraph (1)(B), the Agency shall add the location of the treatment facility and the name of the steel mill contracting CSI's services. This rule adds the location of U.S. Ecology, Texas Ecology in Robstown, Texas as the treatment facility and Structural Metals, Inc. as the steel mill contracting the services of CSI. This rule also updates the 1995 exclusion to include Paragraphs (6) and (7), the Delisting Reopener language and Notification Requirements; and other updates regarding the disposal and submission of Quality Assurance Plan prior to submission of data for a new facility.

DATES: This rule is effective September 23, 2008.

ADDRESSES: The public docket for this direct final rule is located at 1445 Ross Avenue in the FOIA Review Room, identified by Docket ID No. EPA–R06–RCRA–2008–0455. All documents in the electronic 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 Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this direct final rule, EPA–R06–RCRA–2008–0455, is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at $0.15 per page. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket, contact Michelle Peace, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7430 or by e-mail at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 1995 (60 FR 31107), EPA finalized a conditional multiple site exclusion to Conversion Systems Inc., in Horsham, Pennsylvania. In 1995, CSI petitioned EPA for a multiple site exclusion for chemically stabilized electric arc furnace dust (CSEAFD) resulting from the Super Detox™ process as modified by CSI. The original Super Detox™

process was developed by Bethlehem Steel Corporation and used at its Johnstown and Steelton, Pennsylvania facilities. Specifically, CSI was granted the exclusion for CSEAFD generated at the existing Sterling, Illinois facility at Northwestern Steel and future facilities to be constructed. CSI initially planned to construct twelve other facilities nationwide. The resulting CSEAFD is classified as K061 hazardous waste by virtue of the derived from rule.

On March 20, 2006, CSI submitted a K061 Delisting Initial Verification Testing Report to EPA Region 6 in accordance with paragraph 1(A) of the exclusion. It lists Structural Metals Inc, as the new source and U.S. Ecology in Robstown, TX as the treatment location. The data package included sampling results from four (4) representative composite samples of the waste. This data was reviewed by EPA and also evaluated using the Delisting Risk Assessment Software (DRAS) currently used to evaluate new petitions. All constituent concentrations are below the delisting levels published in the exclusion and meet the current DRAS delisting exit levels.

The Agency is also taking this time to update the 1995 CSI exclusion to make the following corrections and additions to the exclusion:

(1) The address of the CSI facility has changed from Horsham, PA and is now located in Willow Grove, PA;

(2) Reports should be submitted to the appropriate Regional Director or his/her designee and no longer the EPA Administrator;

(3) New facilities added to this petition should submit and get EPA approval of their Quality Assurance Project Plans for the verification testing prior to requesting addition to the existing petition; and

(4) Paragraphs (6) and (7) are added to the exclusion language.

The purpose of paragraph (6), the Delisting Reopener Language, is to require the facility to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. The petitioner must also use this procedure, if the waste samples fail to meet the levels found in paragraph (3). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires the petitioner to report differing site conditions or assumptions used in the petition. Additionally, it requires the petitioner to report within 10 days of discovery, instances where testing indicates that delisting levels were not achieved and the waste was subsequently managed as non-hazardous waste. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.,* to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA section 553 (b)(3)(B).

EPA is also adding paragraph (7), Notification Requirements. The treatment facility is required to notify State environmental agencies at least 60 days before beginning the transport and disposal of delisted wastes. This notification would be require for the state where the treated waste is generated as well as states through which the waste is transported and disposed.

Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, 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, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for

affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 29, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, EPA Region 6.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

■ 2. Appendix IX to Part 261, Table 2—Wastes Excluded from Specific Sources is amended by adding the following entry in alphabetical order to ''Conversion Systems Inc.,'' to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Conversion Systems, Inc.	Willow Grove, PA	Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) that is generated by Conversion Systems Inc. (CSI) using the Super Detox™ process as modified by CSI to treat EAFD (EPA Hazardous Waste No. K061) at the following sites and that is disposed of in Subtitle C landfills: Northwestern Steel, Sterling, Illinois after June 13, 1995. Structural Metals, Inc. treated at U.S. Ecology, Robstown, Texas after September 23, 2008. (1) Verification Testing Requirements: Sample collection and analyses, including quality control procedures must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. (A) *Initial Verification Testing:* During the first 20 operating days of full scale operation of a newly constructed Super Detox™ treatment facility, CSI must analyze a minimum of four (4) composite samples of CSEAFD representative of the full 20-day period. Composites must be comprised of representative samples collected from every batch generated. The CSEAFD samples must be analyzed for the constituents listed in Condition (3). CSI must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 60 days after the generation of the first batch of CSEAFD. (B) *Addition of New Super Detox™ Treatment Facilities to Exclusion:* If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility consistently meets the delisting levels specified in Condition (3), the Agency will publish a notice adding to this exclusion the location of the new Super Detox™ treatment facility and the name of the steel mill contracting CSI's services. If the Agency's review of the data obtained during initial verification testing indicates that the CSEAFD generated by a specific Super Detox™ treatment facility fails to consistently meet the conditions of this exclusion, the Agency will not publish the notice adding the new facility. (C) Subsequent Verification Testing: For the Sterling, Illinois facility and any new facility subsequently added to CSI's conditional multiple-site exclusion, CSI must collect and analyze at least one composite sample of CSEAFD each month. The composite samples must be composed of representative samples collected from all batches treated in each month. The composite samples must be composed representative samples collected from all batches treated in each month. These monthly representative samples must be analyzed, prior to disposal of the CSEAFD, for the constituents listed in Condition (3). CSI may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are non-hazardous. (2) *Waste Holding and Handling:* CSI must store as hazardous all CSEAFD generated until verification testing as specified in Conditions (1)(A) and (1)(C), as appropriate, is completed and valid analyses demonstrate that Condition (3) is satisfied. If the levels of constituents measured in the samples of CSEAFD do not exceed the levels set forth in Condition (3), then the CSEAFD is non-hazardous and may be managed and disposed of in Subtitle D landfills. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the CSEAFD generated during the time period corresponding to this sample must be retreated until it meets these levels, or managed and disposed of in accordance with Subtitle C of RCRA. CSEAFD generated by a new CSI treatment facility must be managed as a hazardous waste prior to the addition of the name and location of the facility to the exclusion. After addition of the new facility to the exclusion, CSEAFD generated during the verification testing in Condition (1)(A) is also non-hazardous, if the delisting levels in Condition (3) are satisfied.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) *Delisting Levels:* All leachable constituents for those metals must not exceed the following levels (ppm): Antimony-0.06; Arsenic-0.50; Barium-7.6; Beryllium-0.010; Cadmium-0.050; Chromium-0.33; Lead-0.15; Mercury-0.009; Nickel-1.00; Selenium-0.16; Silver-0.30; Thallium-0.020; Vanadium-2.0; Zinc-70. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24.
		(4) *Changes in Operating Conditions:* After initiating subsequent testing described in Condition (1)(C), if CSI significantly changes the stabilization process established under Condition (1) (e.g., use of new stabilization reagents), CSI must notify the Agency in writing. After written approval by EPA, CSI may handle CSEAFD generated from the new process as non-hazardous, if the wastes meet the delisting levels set in Condition (3).
		(5) *Data Submittals:* CSI must submit the information described below. If CSI fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). CSI must:
		(A) At least one month prior to operation of a new Super Detox™ treatment facility, CSI must notify, in writing, the EPA Regional Administrator or his designee, when the new Super Detox™ treatment facility is scheduled to be on-line. The data obtained through paragraph 1(A) must be submitted to the Regional Administrator or his designee within the time period specified. All supporting data can be submitted on CD–ROM or some comparable electronic media.
		(B) CSI shall submit and receive EPA approval of the Quality Assurance Project Plan for data collection for each new facility added to this exclusion prior to conducting sampling events in paragraph 1(A).
		(C) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years.
		(D) Furnish these records and data when either EPA or the State agency requests them for inspection.
		(E) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted. ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.
		As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.''
		(6) Reopener: (A) If, anytime after disposal of the delisted waste CSI, the treatment facility, or the steel mill possess or is otherwise made aware of any data (including but not limited to leachate data or ground water monitoring data) relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by EPA in granting the petition, then the facility must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.
		(B) If subsequent verification testing of the waste as required by paragraph 1(C) does not meet the delisting requirements in paragraph 3 and the waste is subsequently managed as non-hazardous waste, CSI must report the data, in writing, to EPA within 10 days of first possessing or being made aware of that data.
		(C) If CSI fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, EPA will make a preliminary determination as to whether the reported information requires action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.
		(D) If EPA determines that the reported information requires action, EPA will notify the facility in writing of the actions it believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information explaining why the proposed EPA action is not necessary. The facility shall have 10 days from the date of EPA's notice to present such information.
		(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), EPA will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in EPA's determination shall become effective immediately, unless EPA provides otherwise.
		(7) Notification Requirements: CSI or the treatment facility must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.
		(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.
		(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.
		(C) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.

* * * * * * *

[FR Doc. E8–22170 Filed 9–22–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[WO–310–1310–PP–24 1A]

RIN 1004–AE01

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its mineral programs and some filing fees for mineral-related documents. These updates include fees for actions such as lease applications, name changes, corporate mergers, and lease consolidations.

DATES: *Effective date:* This final rule is effective October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Tim Spisak, Chief, Division of Fluid Minerals, 202–452–5061, or Cynthia Ellis, Regulatory Affairs Specialist, (202) 452–5012. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, MS–LS 401, 1849 C Street, NW., Washington, DC 20240; Attention: RIN 1004–AE01.

SUPPLEMENTARY INFORMATION:

Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. (See also 43 CFR 3000.10.) Because the fee recalculations are simply based on a mathematical formula, we have changed the fees in a final rule without providing opportunity for notice and comment. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule simply administers the procedure set forth in those regulations. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary, and that the rule may be effective less than 30 days after publication.

Discussion of Final Rule

BLM's first fee update rule became effective on October 1, 2007. 72 FR 50882 (Sept. 5, 2007). The fee updates effective each October 1 are based on the IPD–GDP for the 4th Quarter of the preceding calendar year. See 72 FR 50882. This fee update is based on the IPD–GDP for 4th Quarter 2007, thus reflecting inflation over the four calendar quarters since 4th Quarter 2006.

This rule also includes a minor amendment to BLM's stated method of rounding numbers to arrive at the final fee. The final 2005 and 2007 rules stated that values would be rounded ''to the nearest $5.00.'' 70 FR 58855; 72 FR 50884. In this rule we adjust for the first time the geothermal nomination fee of $100 plus $0.10 per acre nominated.[1] Because rounding the adjusted value for a fee of $0.10 to the nearest $5.00 cannot be sensibly implemented, we will round values for fees under $1.00 to the nearest penny. Pursuant to the Administrative Procedure Act, 5 U.S.C. section 553(b)(B), BLM finds that notice and public comment procedure on this point are unnecessary because this is a minor revision that is consistent with general business practices. Moreover, BLM did not receive any comments on rounding when it proposed to round fees down or up to the nearest $5.00 in the 2005 proposed rule. 70 FR 41540. The Attorney General's Manual on the APA states that the term ''unnecessary'' in 5 U.S.C. section 553(b)(B) ''refers to the issuance of a minor rule or amendment in which the public is not particularly interested.'' FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK 63 (William F. Funk, Jeffrey S. Lubbers & Charles Pou, Jr., eds., ABA Publishing 3d ed. 2000). BLM has determined that this amendment falls within that category.

The calculations that resulted in the new fees are included in the table below.

FIXED COST RECOVERY FEES FY09

Document/action	Existing fee [2]	Existing value [3]	IPD–GDP increase [4]	New value [5]	New fee [6]
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Noncompetitive lease application	$360	$357.88	$9.20	$367.08	$365
Competitive lease application	140	138.88	3.57	142.45	140
Assignment and transfer of record title or operating rights	80	80.12	2.06	82.18	80
Overriding royalty transfer, payment out of production	10	10.68	0.27	10.95	10
Name change, corporate merger or transfer to heir/devisee	185	186.95	4.80	191.75	190
Lease consolidation	395	395.27	10.16	405.43	405
Lease renewal or exchange	360	357.88	9.20	367.08	365
Lease reinstatement, Class I	70	69.44	1.78	71.22	70
Leasing under right-of-way	360	357.88	9.20	367.08	365
Geophysical exploration permit application—Alaska	25	.....	.....	.....	[7] 25
Renewal of exploration permit—Alaska	25	.....	.....	.....	[8] 25
Geothermal (part 3200):					

[1] When the 2007 cost recovery fee update rule was issued, we did not update this fee because it had been in effect less than one year. 72 FR 50884 n.9 (table).

FIXED COST RECOVERY FEES FY09—Continued

Document/action	Existing fee [2]	Existing value [3]	IPD–GDP increase [4]	New value [5]	New fee [6]
Noncompetitive lease application	360	357.88	9.20	367.08	365
Competitive lease application	140	138.88	3.57	142.45	140
Assignment and transfer of record title or operating right	80	80.12	2.06	82.18	80
Name change, corporate merger or transfer to heir/devisee	185	186.95	4.80	191.75	190
Lease consolidation	395	395.27	10.16	405.43	405
Lease reinstatement	70	69.44	1.78	71.22	70
Nomination of lands	100	100	2.57	102.57	105
plus per acre nomination fee	0.10	0.10	0.00257	0.10257	.10
Site license application	55	53.42	1.37	54.79	55
Assignment or transfer of site license	55	53.42	1.37	54.79	55
Coal (parts 3400, 3470):					
License to mine application	10	10.68	0.27	10.95	10
Exploration license application	295	293.78	7.55	301.33	300
Lease or lease interest transfer	60	58.76	1.51	60.27	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	30	32.05	0.82	32.87	35
Prospecting permit application amendment	60	58.76	1.51	60.27	60
Extension of prospecting permit	95	96.15	2.47	98.62	100
Lease modification or fringe acreage lease	25	26.71	0.69	27.40	25
Lease renewal	460	459.37	11.81	471.18	470
Assignment, sublease, or transfer of operating rights	25	26.71	0.69	27.40	25
Transfer of overriding royalty	25	26.71	0.69	27.40	25
Use permit	25	26.71	0.69	27.40	25
Shasta and Trinity hardrock mineral lease	25	26.71	0.69	27.40	25
Renewal of existing sand and gravel lease in Nevada	25	26.71	0.69	27.40	25
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	10	10.68	0.27	10.95	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	10	10.68	0.27	10.95	10
Notice of Location	15	16.02	0.41	16.43	15
Amendment of location	10	10.68	0.27	10.95	10
Transfer of mining claim/site	10	10.68	0.27	10.95	10
Recording an annual FLPMA filing	10	10.68	0.27	10.95	10
Deferment of assessment work	95	96.15	2.47	98.62	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	25	26.71	0.69	27.40	25
Mineral patent adjudication.					
(more than 10 claims)	2,690	2,692.12	69.19	2,761.31	2,760
(10 or fewer claims)	1,345	1,346.06	34.59	1,380.65	1,380
Adverse claim	95	96.15	2.47	98.62	100
Protest	60	58.76	1.51	60.27	60

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis.

How Fees Are Adjusted

The figures in the ''New Value'' column in the table above, not those in the ''New Fee'' column, will be used in the following year as the basis for calculating the annual adjustment to these fees. Because the new values are rounded to the nearest $5.00, or the nearest penny for fees under $1.00 (see above), in setting the new fees, future fees based on the figures in the ''New Fee'' column would become significantly over-or-under-valued over time. In today's rule, the figures in the Existing Value column are from the New Value column in the final rule of September 5, 2007. However, if the ''New Value'' column is blank because the fee was not updated in this rule, future adjustments will be based on the figures in the ''New Fee'' column. Adjustments to future fees will be made by multiplying the annual change in the IPD–GDP by the reported New Value in the previous year's rule. This calculation will define a new value for that year, which will then be rounded to the nearest $5.00, or the nearest penny for fees under $1.00, to establish the new adjusted fee.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and

[2] The Existing Fee was established by the 2007 cost recovery fee update rule published September 5, 2007 (72 FR 50882), effective October 1, 2007.

[3] The Existing Value is the figure from the ''New Value'' column in the rule published September 5, 2007 (72 FR 50882).

[4] From 4th Quarter 2006 (117.522) to 4th Quarter 2007 (120.542) the IPD–GDP increased by 2.57%. The value in the IPD–GDP Increase column is 2.57% of the Existing Fee.

[5] The sum of the Existing Value and IPD–GDP Increase is the New Value.

[6] The New Fee for 2009 is the New Value rounded to the nearest $5.00.

[7] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that ''the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.'' In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, we interpret the provision quoted as prohibiting us from increasing this $25 fee.

[8] We interpret the Energy Policy Act prohibition discussed in footnote 7, above, as prohibiting us from increasing this $25 fee, as well.

Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not 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. The changes in today's rule are much smaller than those in the 2005 or 2007 final rules, which did not approach the threshold in E.O. 12866.

For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule does apply an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, these fee increases are less than 3% and do not materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was proposed and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. The average increase in the fixed fees will be less than 3 percent as a result of this final rule. The adjustments result in no increase in the fee for processing of 28 documents relating to the BLM's minerals programs. The highest adjustment is for mineral patent adjudications involving more than 10 mining claims, which will be increased by $70.00. For the 2005 final rule, the BLM completed a threshold analysis which is available for public review in the administrative record for that rule. (For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section, above.) The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule or in the 2007 update, which adjusted the fees after two years rather than one.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule or in the 2007 update, which adjusted the fees after two years rather than one.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant Federalism effects. A Federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), we submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

(1) 1004–0034 which expires April 30, 2009;

(2) 1004–0074 which expires December 31, 2009;

(3) 1004–0137 which expires July 31, 2010;

(4) 1004–0162 which expires February 28, 2009;

(5) 1004–0185 which expires July 31, 2009;

Geothermal

(6) 1004–0132 which expires July 31, 2010;

Coal

(7) 1004–0073 which expires March 31, 2010;

Mining Claims

(8) 1004–0025 which expires November 30, 2009;

(9) 1004–0114 which expires February 28, 2010; and

Leasing of Solid Minerals Other Than Oil Shale

(10) 1004–0121 which expires November 30, 2009.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the Department of the Interior has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely reports changes in service fees. The Department therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Items 1.7 and 1.10. In addition, the final rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have been determined to have no such effect in procedures adopted by a Federal agency, and therefore require neither an environmental assessment nor an environmental impact statement.

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, because it will not result in state, local, private sector, or tribal government expenditures of $100 million or more in any one year. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Information Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Tim Spisak, Division of Fluid Minerals, assisted by Cynthia Ellis of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: September 11, 2008.

Julie A. Jacobson,

Acting Assistant Secretary—Land and Minerals Management.

■ For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Revise § 3000.12 (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2009. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register**, and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

FY 2009 PROCESSING AND FILING FEE TABLE

Document/action	FY 2009 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Noncompetitive lease application	$365
Competitive lease application	140
Assignment and transfer of record title or operating rights	80
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	190
Lease consolidation	405
Lease renewal or exchange	365
Lease reinstatement, Class I	70
Leasing under right-of-way	365
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200):	
Noncompetitive lease application	365
Competitive lease application	140
Assignment and transfer of record title or operating rights	80
Name change, corporate merger or transfer to heir/devisee	190
Lease consolidation	405
Lease reinstatement	70
Nomination of lands	10
plus per acre nomination fee	0.10
Site license application	55
Assignment or transfer of site license	55
Coal (parts 3400, 3470):	
License to mine application	10
Exploration license application	300
Lease or lease interest transfer	60
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	35
Prospecting permit application amendment	60
Extension of prospecting permit	100
Lease modification or fringe acreage lease	25
Lease renewal	470
Assignment, sublease, or transfer of operating rights	25
Transfer of overriding royalty	25
Use permit	25

FY 2009 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2009 fee
Shasta and Trinity hardrock mineral lease	25
Renewal of existing sand and gravel lease in Nevada	25
Multiple Use; Mining (part 3730):	
Notice of protest of placer mining operations	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location	10
Notice of location*	15
Amendment of location	10
Transfer of mining claim/site	10
Recording an annual FLPMA filing	10
Deferment of assessment work	100
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	25
Mineral patent adjudication	2,760 (more than 10 claims) 1,380 (10 or fewer claims)
Adverse claim	100
Protest	60

*To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. (43 CFR part 3833).

[FR Doc. E8–22255 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 070801432–8663–02]

RIN 0648–AV92

Atlantic Highly Migratory Species; Atlantic Tuna Fisheries; Pelagic and Bottom Longline Fisheries; Gear Authorization and Turtle Control Devices

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

ACTION: Final rule.

SUMMARY: NMFS authorizes green-stick gear for the harvest of Atlantic tunas, including bluefin tuna (BFT), and requires a sea turtle control device in Atlantic Highly Migratory Species (HMS) pelagic longline (PLL) and bottom longline (BLL) fisheries. At this time, NMFS is not authorizing harpoon gear for the harvest of Atlantic tunas in the Highly Migratory Species (HMS) Charter/Headboat (CHB) category as originally proposed. The purpose of this final rule is to ensure fishermen harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. This final rule also addresses use of sea turtle control devices in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear. NMFS also has revised its list of equipment models that NMFS has approved as meeting the minimum design specifications for the careful release of sea turtles caught in hook and line fisheries.

DATES: The amendments to § 600.725; § 635.2; § 635.21 introductory text (first sentence), (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(*3*), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), (g); and § 635.71 are effective on October 23, 2008. The amendments to § 635.21 introductory text (second sentence), (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(*1*) are effective on January 1, 2009.

ADDRESSES: For copies of the Final Environmental Assessment (EA), or other related documents, please write to the Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or call at (301)713-2347 or fax to (301)713-1917. Copies are also available on the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/*.

FOR FURTHER INFORMATION CONTACT: Randy Blankinship, 727-824-5399, or Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR parts 600 and 635.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). Among other things, these regulations included a list of fishing gears authorized for harvest of HMS. On October 2, 2006, NMFS published in the **Federal Register** final regulations (71 FR 58058), effective November 1, 2006, implementing the ''Final Consolidated Atlantic HMS Fishery Management Plan'' (Consolidated HMS FMP), which consolidated the management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP.

Background

Background information about green-stick gear authorization and sea turtle control device requirements was provided in the preamble to the proposed rule (73 FR 24924; May 6, 2008). Please see the proposed rule for complete background information. This final rule: (1) authorizes green-stick gear for the harvest of Atlantic tunas by Atlantic Tunas General category permitted vessels; (2) authorizes green-stick gear for the harvest of Atlantic tunas by HMS CHB permitted vessels; (3) authorizes green-stick gear for harvest of Atlantic tunas by Atlantic Tunas Longline category permitted vessels (but continues to restrict BFT retention to incidental retention only); and (4) requires possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear in PLL and BLL fisheries. This action is published in accordance with the framework procedures set forth in the Consolidated HMS FMP and is supported by the analytical documents prepared for the Consolidated HMS FMP. As described in the Response to Comments and Changes from the Proposed Rule sections of this document, NMFS has reconsidered the proposed rule preferred alternative regarding authorization of harpoon use on HMS CHB vessels and has decided to maintain the status quo for regulations regarding authorized harpoon use as Atlantic tuna fishing gear.

Fishing Gear Authorization—Green-Stick Gear

Green-stick gear is used primarily to catch yellowfin tuna (YFT) and consists of a mainline with hooks on leaders or gangions trolled from a long fiberglass or bamboo pole. Baits used with green-stick gear may be artificial or natural. Green-stick gear has been used in the Atlantic commercial and recreational bigeye (BET), albacore, YFT, skipjack (collectively referred to as BAYS tunas), and BFT fisheries since the mid-1990s, but it was not originally included as a separate gear on the list of authorized HMS fishery gears in the 1999 FMP. Logbook records show that commercial catches of BAYS and BFT with green-stick gear continued in the Atlantic Tunas General, Atlantic Tunas Longline, and the HMS CHB categories and were classified either as ''handgear'' catches in the Atlantic Tunas General and HMS CHB categories or as ''longline'' catches in the Atlantic Tunas Longline category, depending on gear configuration. In recent years, public comments indicate that green-stick gear use, managed under those regulations, did not well suit the fishing methods and locations preferred by fishermen wanting to use the gear.

The most recent YFT stock assessment, conducted in 2003, indicated that the stock may be approaching an overfished condition. YFT is the principal species of tropical tuna landed by U.S. fisheries in the western North Atlantic.

The latest western Atlantic BFT stock assessment conducted in 2006 indicated that the stock is overfished and overfishing is occurring. The ICCAT Standing Committee on Research and Statistics (SCRS) considered this and other information when making recommendations to ICCAT for setting total allowable catch (TAC) limits that would allow for stock rebuilding. The results of the 2008 SCRS BFT stock assessment will be available this fall.

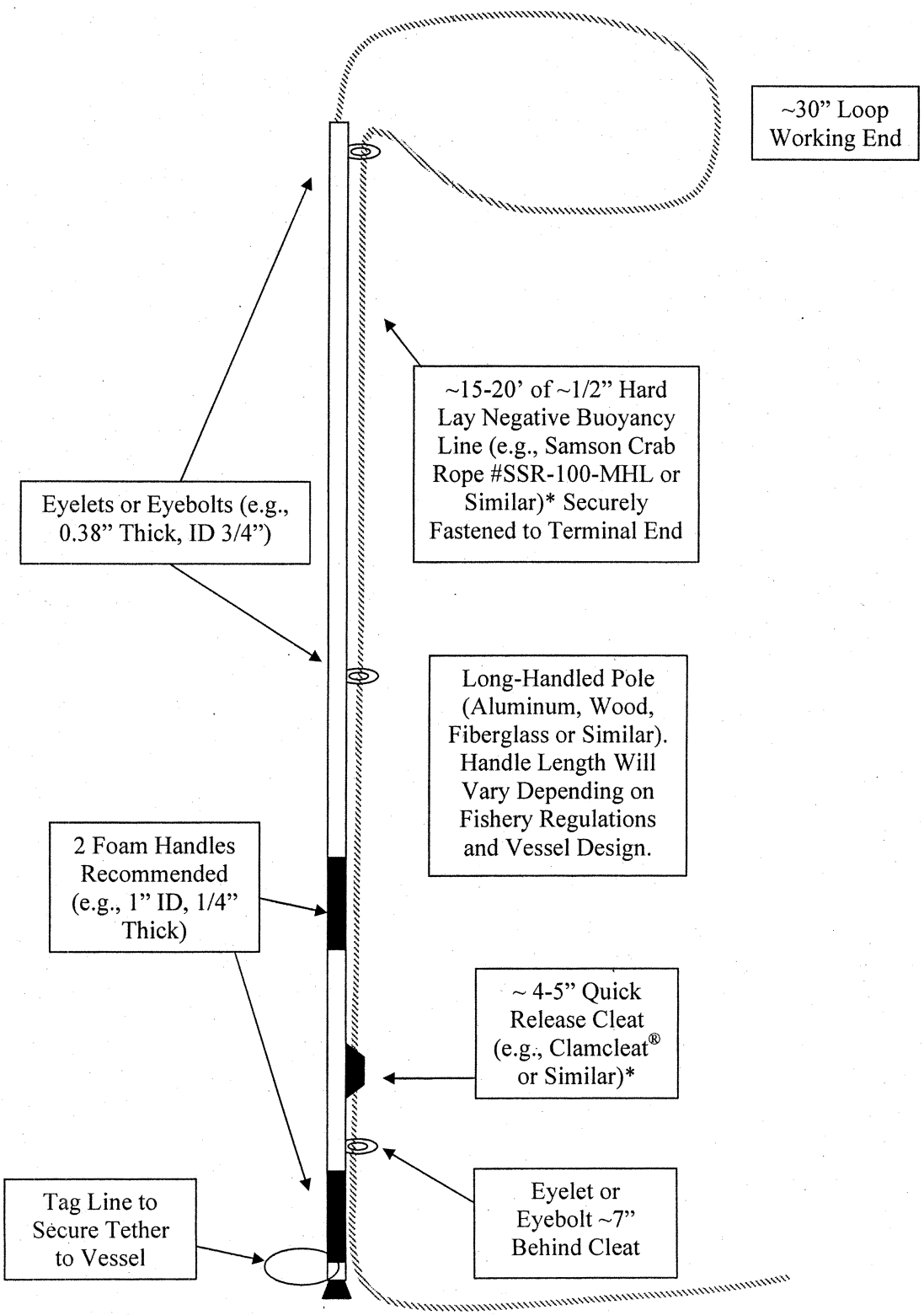
NMFS intends with this final rule to allow harvest of Atlantic tunas within existing quotas, size limits, or other established limitations with a gear that is generally efficient in harvesting target species and, at the same time, is low in bycatch and bycatch mortality. Allowing a gear with these characteristics may have benefits to target and non-target species over gear with higher bycatch and bycatch mortality levels. As described above, green-stick gear is used primarily for YFT; however, BFT is caught at times and represents a very low percentage of the catch with this gear.

Sea Turtle Control Device

The 2004 BiOp for the PLL fishery found that the long-term continued operation of the Atlantic PLL fishery as proposed was likely to jeopardize the continued existence of leatherback sea turtles, a species listed as endangered under the Endangered Species Act (ESA). Reasonable and prudent alternatives (RPAs) under section 7 of the ESA (50 CFR 402.02) were developed and implemented to avoid jeopardy by, among other things, reducing post-release mortality of leatherback turtles. The RPAs included several measures to accomplish these goals, one of which was to require the use of gear removal measures to maximize post-release survival. On July 6, 2004, NMFS published the final rule (69 FR 40736) implementing sea turtle bycatch and bycatch mortality mitigation measures for the PLL fishery and provided for additional rulemaking and non-regulatory actions, as necessary, to implement any other management measures required under the 2004 BiOp.

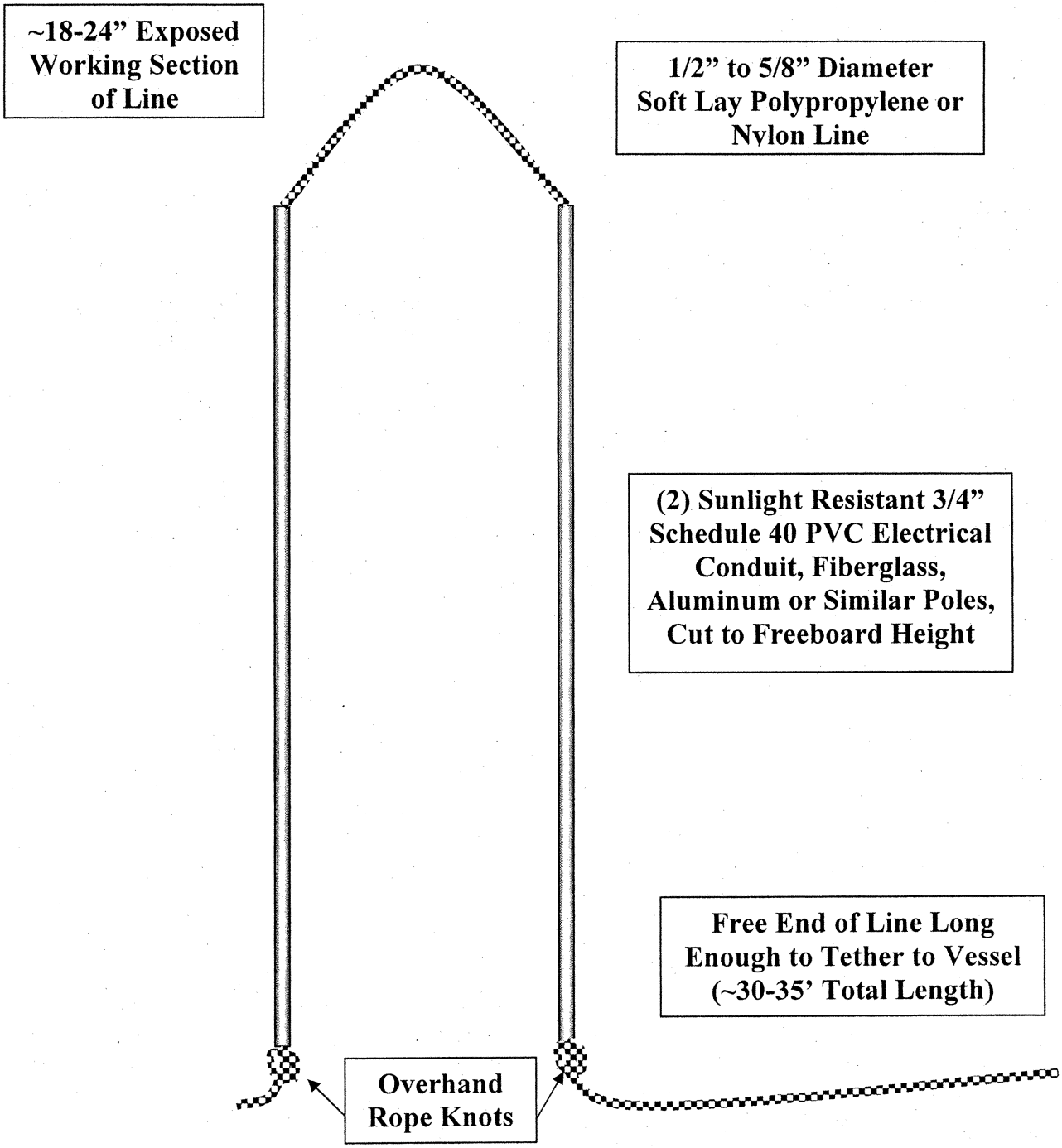
This final rule requires possession and use of a sea turtle control device as an addition to the already existing requirements for sea turtle bycatch mitigation gear. Two types of sea turtle control devices, the Turtle Tether and T&G Ninja Sticks (Figures 1 and 2), whether purchased or constructed, are approved to meet this requirement. These devices were developed by fishermen in the PLL fishery in response to safety concerns for fishing vessel crew members and for incidentally captured sea turtles, as well as to facilitate the likelihood of maximum gear removal and reducing post-release mortality. Subsequently, information collected by the NMFS Southeast Fisheries Science Center showed that use of these two types of sea turtle control devices better enabled fishermen to remove fishing hooks and line from sea turtles by better controlling the animals, thus likely reducing post-release hooking mortality of sea turtles.

Figure 1. Turtle Tether



* The use of Samson Crab Rope and Clamcleat® are by reference only and no endorsement or affiliation is implied.

Figure 2. T&G Ninja Sticks



The function of a turtle control device is to control the front flippers of the sea turtle so that the animal can be controlled at the side of the vessel while the gear is removed. Restraint is most effective when a pair of turtle control devices is used (two sets of turtle tethers, two sets of T&G ninja sticks, or one of each style). This rule requires that one turtle control device be possessed and used onboard; however, NMFS strongly recommends that two devices be possessed and used if vessel and crew size allow.

See Table 1 for a revised list of equipment models that NMFS has approved as meeting the minimum design specifications for the careful release of sea turtles caught in hook and line fisheries. The list includes both the required gears and NMFS-approved models of equipment that may be used as options to meet the requirements for gear that must be carried on board vessels participating in the Atlantic PLL and BLL fisheries (50 CFR 635.21(c)(5)(i) and (d)(3)(i)). Equipment

may also be fabricated and used by individuals according to the minimum design specifications (50 CFR 635.21(c)(5)(i)). The benefit of using these gears is to maximize safe and efficient gear removal from incidentally captured sea turtles thereby minimizing the potential for serious injury or mortality of the sea turtles.

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES

Required Item	NMFS-Approved Models
(A) Long-handled line cutter, with one set of replacement blades*	LaForce Line Cutter; or Arceneaux Line Clipper
(B) Long-handled dehooker for ingested hooks*	ARC Pole Model Deep-Hooked Dehooker (Model BP11)[1]; or NOAA/Bergmann Dehooker[2] on long-handle
(C) Long-handled dehooker for external hooks[3]*	ARC Model LJ6P (6 ft (1.83 m)); or ARC Model LJ36; or ARC Pole Model Deep-Hooked Dehooker (Model BP11)[1]; or ARC 6 ft. (1.83 m) Pole Big Game Dehooker (Model P610); or Robey Dehooker on long-handle; or NOAA/Bergmann Dehooker on long-handle
(D) Long-handled device to pull an "inverted V"[4]*	ARC Model LJ6P (6 ft.)(1.83 m); or Davis Telescoping Boat Hook to 96 in. (2.44 m) (Model 85002A); or West Marine # F6H5 Hook and # F6-006 Handle
(E) Dipnet**	ARC 12-ft. (3.66-m) Breakdown Lightweight Dip Net Model DN6P (6 ft. (1.83 m)); or ARC Model DN08 (8 ft.(2.44 m)); or ARC Model DN 14 (12 ft. (3.66 m)); or ARC Net Assembly & Handle (Model DNIN); or Lindgren-Pitman, Inc. Model NMFS Turtle Net
(F) Standard automobile tire**	Any standard automobile tire free of exposed steel belts

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES—Continued

Required Item	NMFS-Approved Models
(G) Short-handled dehooker for ingested hooks**	ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08)[1]; or NOAA/Bergmann Dehooker[2] on short-handle
(H) Short-handled dehooker for external hooks[5]**	ARC Hand-Held Large J-Style Dehooker (Model LJ07); or ARC Hand-Held Large J-Style Dehooker (Model LJ24); or ARC 17-inch (43.18-cm) Hand-Held Bite Block Deep-Hooked Turtle Dehooking Device (Model ST08)[1]; or Scotty's Dehooker; or Robey Dehooker on short-handle; or NOAA/Bergmann Dehooker on short-handle
(I) Long-nose or needle-nose pliers**	12-in. (30.48-cm) S.S. NuMark Model # 030281109871; or any 12-inch (30.48-cm) stainless steel long-nose or needle-nose pliers
(J) Bolt cutter**	H.K. Porter Model 1490 AC
(K) Monofilament line cutter**	Jinkai Model MC-T
(L) Two of the following mouth openers and mouth gags**	
(L1) Block of hard wood	Any block of hard wood meeting design standards (e.g., Olympia Tools Long-Handled Wire Brush and Scraper (Model 974174))
(L2) Set of (3) canine mouth gags	Jorvet Model #4160, 4162, and 4164
(L3) Set of (2) sturdy dog chew bones	Nylaboner® (a trademark owned by T.F.H. Publications, Inc.); or Gumaboner® (a trademark owned by T.F.H. Publications, Inc.); or Galileor® (a trademark owned by T.F.H. Publications, Inc.)

TABLE 1. NMFS-APPROVED MODELS FOR EQUIPMENT NEEDED FOR THE CAREFUL RELEASE OF SEA TURTLES CAUGHT IN HOOK AND LINE FISHERIES—Continued

Required Item	NMFS-Approved Models
(L4) Set of (2) rope loops covered with hose	Any set of (2) rope loops covered with hose meeting design standards
(L5) Hank of rope	Any size soft braided nylon rope is acceptable, provided it creates a hank of rope approximately 2 - 4 inches (5.08 cm - 10.16 cm) in thickness
(L6) Set of (4) PVC splice couplings	A set of (4) Standard Schedule 40 PVC splice couplings (1-inch (2.54-cm), 1 ¼-inch 3.175-cm), 1 ½-inch (3.81-cm), and 2-inch (5.08-cm)
(L7) Large avian oral speculum	Webster Vet Supply (Model 85408); or Veterinary Specialty Products (Model VSP 216-08); or Jorvet (Model J-51z); or Krusse (Model 273117)
(M) Turtle control device***	Turtle Tether and extended reach handle; or T&G Ninja Sticks and extended reach handles

*Items (A) - (D), and (M) are required for turtles not boated.

**Items (E) - (L) are required for boated turtles.

***Only one turtle control device is required, but NMFS recommends the use of two devices to secure both front flippers.

***Only one turtle control device is required, but NMFS recommends the use of two devices to secure both front flippers.

[1]The pigtail portion of the ARC dehooker may be modified by creating a notch in the pigtail curl where the shank of the hook comes into contact with the dehooker when the line is tightly pulled parallel to the handle.

[2]The NOAA/Bergman dehooker should not be used to remove ingested J–hooks.

[3]The long–handled dehooker for Item B would meet the requirement for Item C.

[4]If a 6–ft (1.83 m) J–Style dehooker is used to satisfy the requirement for Item C, it would also satisfy the requirement for Item D.

[5]The short–handled dehooker for Item G would meet the requirement for Item H.

Response to Comments

A number of individuals and groups provided both written and verbal comments on the proposed rule during the 41-day comment period which ended on June 16, 2008. Six public hearings were held in Saint Petersburg, FL; Manteo, NC; Manahawkin, NJ; Gloucester, MA; Belle Chasse, LA; and Orlando, FL. Public comments were also

heard at meetings of the South Atlantic Fishery Management Council and the HMS Advisory Panel. These comments contributed to a change from the proposed rule, i.e., NMFS' decision to maintain the status quo regarding harpoon authorization for HMS CHB permitted vessels. The comments are summarized below together with NMFS' responses. The comments are grouped by major issue (green-stick gear authorization, harpoon authorization, and sea turtle control device) and are numbered consecutively, starting with 1, at the beginning of each issue.

1. Green-Stick Gear Authorization

Comment 1: NMFS should authorize green-stick gear for Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels because green-stick gear is selective in what species fishermen catch, results in minimal bycatch and low bycatch mortality, and increases fishery operational flexibility in harvesting Atlantic tunas within established limitations. Comments included support from the North Carolina Division of Marine Fisheries, the South Atlantic Fishery Management Council, and representatives of several diverse constituencies on the HMS AP.

Response: NMFS considered these characteristics of green-stick gear when developing the alternatives. Green-stick gear is an actively trolled and tended gear. When fished, the hooks and baits are suspended at or above the surface of the water which reduces the likelihood of catching species that do not strike moving prey at or above the surface of the water. Since the gear is tended, animals that are caught are quickly retrieved to the vessel and either kept, if the species is desired, or released, if it is undersized or an unintended species. Quick retrieval and release of unwanted or unintended animals causes less physiological stress on an animal than some other gears such as longline and results in a higher likelihood of survival.

Increased operational flexibility in harvesting Atlantic tunas results from fishermen having another option or choice in the type of fishing gear they use, particularly when fishing for YFT. This flexibility may be beneficial to help offset increasing operational costs due to factors such as high fuel prices. The availability of green-stick gear as an option provides a gear that is low in bycatch and bycatch mortality and may be chosen by some fishermen for this reason.

Comment 2: Comments were received that NMFS is discriminatory against Longline category vessels if those vessels that do not have longline gear onboard are still required to abide by the incidental catch requirements and if the BFT that they catch are not counted against the General category quota instead of the Longline quota. The premise of these comments is that an Atlantic Tunas Longline permitted vessel that does not have PLL or BLL gear onboard and is fishing with a gear that is also authorized in another permit category should be treated according to the regulations for that other category. In this case, the other category would be General category, thus allowing BFT to be targeted and counted against the General category's quota.

Response: The action to authorize green-stick gear for Atlantic tunas does so within existing quotas, size limits, or other established limitations. Currently established retention limits are some of the existing limitations of permit categories such as Atlantic Tunas Longline and are not modified by this action. This includes the incidental catch requirements described in the response to Comment 3.

The BFT management structure, developed in the 1999 FMP, created quota allocations, effort controls, retention limits, and size limits associated with the various quota categories in an effort to rebuild BFT while allowing for continued BFT harvest. The 1999 FMP also solidified the BFT Longline category as incidental by definition yet provided for limited retention of BFT bycatch. The directed BFT fishery is also managed with a suite of permits and associated regulations such as authorized fishing gears, retention limits, restricted fishing days, and limited access for Purse Seine category. NMFS manages fisheries throughout the United States with different permit types and various regulatory restrictions respective to those permit types in order to achieve the goals of applicable domestic fisheries laws and international agreements. The type of permit(s) that an individual holds may be changed at the discretion of the vessel owner, according to established regulations, among individual persons and/or vessels over time. As such, the distinctive management measures among permit types are not discriminatory.

Comment 3: Comments were received that the target catch requirements of the Atlantic Tunas Longline permit should not apply if a vessel is fishing with green-stick gear and without longline gear onboard.

Response: The action to authorize green-stick gear for Atlantic tunas does so within existing quotas, size limits, or other established limitations. Currently established retention limits are one such existing limitation on permit categories such as Atlantic Tunas Longline and are not modified by this action. The Atlantic Tunas Longline permit allows for the take of BFT only as incidental to other targeted species. The target catch requirements of this permit are found at § 635.23(f), which states that one large medium or giant BFT per vessel per trip may be landed, provided that at least 2,000 lb (907 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Two large medium or giant BFT per vessel per trip may be landed, provided that at least 6,000 lb (2,727 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold. Three large medium or giant BFT per vessel per trip may be landed, provide that at least 30,000 lb (13,620 kg) of species other than BFT are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout slip as sold.

These existing target catch requirements, along with existing retention limits, quota management structure, size limits, restricted fishing days, and other established limitations, serve to constrain the harvest of, effort on, and bycatch of BFT. These constraints are necessary amid ongoing concerns about the overfished status of BFT and the continuing need to avoid increases in BFT bycatch and levels of directed effort that might negatively impact BFT stocks. The existence of these constraining regulations is a major factor in the decision to allow the use of green-stick gear as provided by this final rule. Additionally, modifying retention limits or target catch requirements as provided for at § 635.23(f)(2) was not within the scope of the proposed rule; therefore, adjustment of the target catch is not considered in this final rule.

Comment 4: NMFS should maintain the target catch requirements of the Atlantic Tunas Longline permit.

Response: As stated in the response to Comment 2, this action authorizes green-stick gear within existing quotas, size limits, or other established limitations. This action does not change the existing BFT incidental catch requirements of the Atlantic Tunas Longline Permit and thus, maintains the incidental nature of the Longline category. The existing target catch requirements will remain in effect and are listed in the response to Comment 2 above.

Comment 5: NMFS should avoid increasing directed fishing pressure on BFT.

Response: Directed fishing pressure on BFT is not expected increase beyond a minimal amount as a result of this rule. Green-stick gear is used primarily to harvest YFT, although catch of BFT also occurs at a much lower level. According to coastal and pelagic logbook reports, which include reports from Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels, YFT and BFT represent approximately 82 percent and 2 percent (or less) of the catch, respectively, both by number and weight. The use of green-stick gear by Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels has occurred since at least the mid-1990s. Any potential for an increase in directed fishing pressure on BFT as a result of this rule exists within the General category where directed BFT fishing is allowed. Both Atlantic Tunas General and HMS CHB (when selling BFT) permitted vessels operate within the BFT General category. Increases in directed fishing pressure on BFT are not expected in the Longline category due to the target catch requirements in place for Atlantic Tunas Longline permitted vessels as described in the response to Comment 3 above. Also, targeted fishing for BFT is not allowed in the Gulf of Mexico, an important BFT spawning area; therefore, increases in directed fishing pressure for BFT would not occur in the Gulf of Mexico as a result of this final rule.

While the potential for an increase in directed or incidental effort on BFT exists considering the increase in number of hooks allowed, such increases in effort over existing practices are expected to be minor because the gear is already being used and has been used since the mid-1990s. There is potential for additional vessels not currently using green-stick gear to begin to do so as more fishermen become aware of green-stick gear efficiency in catching Atlantic tunas and of the high quality of fish product that can be delivered to the dock resulting in higher ex-vessel value. Green-stick gear could also be deployed at times and in ways that enable more hooks to be fished during a trip, such as while a vessel is in transit between fishing locations where other authorized gears may be deployed. Such increases in effort, if they were to occur, are expected to be minor as green-stick gear use has developed to its current level over a period of several years. The growth of green-stick gear use is somewhat constrained by the capital investments involved in rigging a vessel to use green-stick gear. A green-stick rig with fiberglass pole and hydraulic haul-back capability is estimated to cost $5,300 $9,300.

If directed use of green-stick gear for YFT or BFT increases above its current level, there may be benefits in improved bycatch mortality compared to some other fishing gears. Bycatch mortality of released fish is anticipated to be low given that baits on green-stick gear are trolled at high speed and deployed at or slightly above the surface of the water. Fish are hooked as they strike the baits which most frequently results in hooking locations in the jaw or other mouth area and does not often result in deep-hooking. Additionally, because green-stick gear is usually rigged with power haul-back capability, the mainline can be quickly retrieved, thereby enabling undersized or non-target fish to be released with a minimum of stress and physical trauma. Due to this characteristic of green-stick gear, NMFS anticipates that there may be beneficial effects for target and non-target species when compared to other fishing gears, such as longline and rod and reel, because improving post-release survival of fish reduces overall fishing mortality. Finally, while authorization of green-stick gear is not expected to result in a great increase in BFT landings, if an increase were to occur, repeated quota under-harvests in recent years indicate that sufficient quota exists to allow for some additional landings despite the latest bluefin tuna stock assessment that indicates that the stock is overfished.

Comment 6: NMFS should maintain enforceability of PLL closed areas by ensuring that PLL gear is not onboard vessels fishing with green-stick gear in PLL closed areas.

Response: This final rule does not change the requirement that PLL or BLL gear be removed from an Atlantic Tunas Longline permitted vessel when the vessel is in a PLL or BLL closed area. Green stick gear will, however, by allowed in the closed area. The rule distinguishes green-stick gear from PLL and BLL by defining it as ''an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or mechanical means. Green-stick does not constitute a PLL or a BLL as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.'' The distinguishing characteristics that separate the gears are that green-stick gear is actively trolled and does not have floats capable of supporting the mainline, as with PLL gear, nor weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, as with BLL gear. NMFS believes that these characteristics are recognizable and, with the definition and distinctions made between the gears, enforceability of longline restrictions in the closed areas will be maintained.

Comment 7: NMFS should maintain the enforceability of the circle hook requirement on PLL vessels.

Response: This action does not change the requirement that only circle hooks may be used on PLL gear. It does provide for the possession of up to 20 J-hooks for use only with green-stick gear if green-stick gear is onboard. NMFS believes that the definition of green-stick gear allows the gear to be recognized by enforcement agents and distinguishes it from PLL, thus enabling enforcement agents to know when the possession of 20 J-hooks is allowed.

Comment 8: NMFS should maintain enforceability of the live bait prohibition in the Gulf of Mexico.

Response: This action does not change the live bait prohibition in the Gulf of Mexico. In order to enhance enforcement capability of the live bait prohibition and prevent the use of bait catching rigs such as ''sabiki'' rigs (which use small hooks) under the guise of green-stick gear, a minimum hook size is established for J-hooks that are allowed to be used with green-stick gear onboard Atlantic Tunas Longline Permitted vessels. Under this provision, the use of J-hooks less than 1.5 inch (38.1 mm, approximately the size of a standard 2/0 to 3/0 J-hook), when measured in a straight line over the longest distance from the eye to any other part of the hook, is prohibited.

Comment 9: NMFS should require that any BFT caught on green-stick gear in the GOM be released regardless of permit category in order to protect BFT in the spawning area.

Response: This action authorizes green-stick gear for Atlantic tunas within existing quotas, size limits, or other established limitations. Directed fishing for BFT remains prohibited in the GOM. This action does not change existing provisions to protect BFT in the GOM. Green-stick gear is authorized for use by Atlantic Tunas General, HMS CHB, and Atlantic Tunas Longline permitted vessels. Atlantic Tunas General category vessels may not retain BFT in the GOM. Atlantic-wide, when selling BFT, HMS CHB permitted vessels operate under the rules for General category, and General category

vessels may not retain BFT in the GOM. This means that HMS CHB vessels may not retain BFT for commercial purposes in the GOM. For recreational fishing in the GOM, which also applies to HMS CHB permitted vessels, one ''trophy'' BFT (73 in CFL) is allowed to be retained per vessel per year only as incidental to targeted fishing for other species.

Comment 10: Comments were received in support of increased data collection on green-stick gear fishing to include designating a green-stick gear code. Also, comments were received in support of improved data collection on green-stick gear fishing that would allow for appropriate monitoring of effort and landings to enable changes or problems in the fishery to be addressed as soon as possible. In addition, improved data collection could show benefits of green-stick gear such as low bycatch and the possible elimination of protected species interactions.

Response: NMFS has designated a gear code which will facilitate improved gear-specific data collection via dealer reporting through trip tickets in the southeast and dealer reporting systems in the northeast. The gear code may also aid in improved gear-specific data collection via logbooks. Data collection on green-stick gear and other gears is important for assessing the need for and appropriateness of future management measures.

Harpoon Authorization

Comment 1: NMFS received a wide range of comments on authorization of harpoon gear for use by HMS CHB permitted vessels, from full support to complete opposition. The majority of comments received on the harpoon authorization issue opposed the action, as described below. Comments in support of harpoon use authorization for all HMS CHB trips included: 1) the BFT fishing industry needs all the help it can get and NMFS should do all it can to maximize fishing opportunities within current quotas, particularly because harpoon fishing is already limited by the need for good weather conditions; 2) the action would provide fishermen the flexibility of gear choice, which would be beneficial given current high operating costs, and would increase opportunities to harvest BFT within the General category daily retention limit (currently 3 BFT/vessel); and 3) authorization of harpoon gear on HMS CHB vessels would not significantly increase competition for current HMS CHB permit holders as very few vessel owners would make the large capital investment to outfit their vessels to use harpoon gear in the HMS CHB category.

Comments supporting harpoon authorization for HMS CHB vessels on non-for-hire trips only include: 1) this alternative would work well for HMS CHB captains and crew, who could harpoon BFT in the early season (when BFT are more readily caught at the water's surface in the Gulf of Maine) and switch to rod and reel use in the late summer for use on charter trips; and 2) there is no reason for harpoons to be used on charter trips with paying passengers aboard.

The majority of comments received on the harpoon authorization issue opposed the action. Comments include: 1) NMFS needs to take a more precautionary approach in regard to the BFT fishery, which is overfished, and in which overfishing is occurring; 2) this action would be inconsistent with efforts to rebuild BFT; 3) new measures should not be adopted in the name of quota utilization; 4) the action could lead to shorter seasons and lower retention limits for HMS CHB vessels; and 5) the action could lead to disruption by new harpooners of Harpoon category fishing activities, and/or dilution of the historical HMS CHB business by historical harpooners (contradicting the rationale NMFS used in establishing a separate HMS CHB permit category).

Response: NMFS has considered these comments, some of which were also made at the April 2008 HMS Advisory Panel meeting. Based on the relative lack of public support, and on consideration of the various concerns raised by NMFS and the public, including concerns about bycatch, enforcement and safety (discussed further in responses below), and BFT stock status generally, NMFS has decided, at this time, to maintain the status quo regarding authorized harpoon use, i.e., authorized harpoon use by the General and Harpoon categories only.

Comment 2: NMFS received several comments specifically regarding potential increases in BFT dead discards, bycatch (of undersized fish), and bycatch mortality that may result from the proposed harpoon authorization. Comments expressed concern that now is not the time to increase fishing effort on BFT as it could further strain the resource. Examples of this resource strain were increased mortality of BFT that are harpooned and lost, undersized BFT that are harpooned unintentionally by less experienced crew while targeting commercial-sized BFT, or BFT that are discarded in the process of highgrading. Comments from those supportive of the action stated that authorization of harpoon gear on HMS CHB vessels would not significantly increase BFT bycatch and bycatch mortality as effort is unlikely to substantially increase due to the large capital investment for owners to outfit their vessels to use harpoon gear in the HMS CHB category.

Response: NMFS does not have information with which to estimate quantitatively the potential increase in discards, bycatch, and bycatch mortality that could result from HMS CHB harpoon use. NMFS anticipates that the number of HMS CHB operators that would outfit their vessels with harpoon gear would be low. However, to the extent that inexperienced users may inadvertently strike an undersized BFT, bycatch and bycatch mortality likely would increase with the proposed authorization. NMFS believes that harpoon use by HMS CHB vessels could result in increased discard mortality of BFT over the discard mortality that occurs with gear currently authorized for HMS CHB use (rod and reel, bandit gear, and handline) and green-stick gear to be authorized by this final rule.

Comment 3: NMFS received several comments regarding enforceability of the harpoon authorization. Comments opposing harpoon authorization stated that enforcement would be difficult if harpoons are authorized on non-for-hire trips only. Some of these comments further state that the proposed action may provide an incentive for captains to convert recreational trips to commercial trips and highgrade, or to use harpoon gear expressly for the satisfaction of paying passengers. Some indicated that harpoon authorization could exacerbate both the nonreporting of catch and landings and the illegal sale of BFT. A comment supportive of the action suggested that NMFS could require that the pulpit be stowed in the upright position while the vessel is on for-hire trips.

Response: Field and dockside enforcement of harpoon authorization for only certain HMS CHB trips would be more challenging than if the authorization applied to all HMS CHB trips. Although NMFS recognizes the possibility that harpoon authorization on for-hire trips would increase the incentive to discard and/or not report fish since HMS CHB crew may fill either the commercial or recreational retention limit on any given fishing day, it is not possible to estimate quantitatively the increase in discards and non-reporting that may occur. As NMFS is not taking action to authorize harpoon use on HMS CHB vessels at this time, consideration of specific gear stowage requirements is not necessary.

Comment 4: NMFS received a few comments regarding safety implications

of the proposed action. Some believed that liability and safety of passengers is the captain's responsibility, and as it would be very unlikely that a paid passenger would be allowed to use the harpoon gear, authorization of harpoon gear should be for all trips. A few commenters asked why NMFS raised safety concerns regarding HMS CHB use of harpoon gear but not of green-stick gear.

Response: NMFS must ensure that management measures, to the extent practicable, promote the safety of human life at sea. Authorization of harpoon gear on HMS CHB vessels, particularly if authorized on all trips, presents the possibility of charter passengers walking out to and standing on a pulpit and/or handling harpoon gear, which may be capable of passing an electric current. Therefore, it is appropriate for NMFS to consider safety concerns and to engage the public in a discussion of these issues. In the proposed rule, NMFS selected harpoon authorization as the preferred subalternative on non-for-hire trips only as it would reduce the incentive for both crew and passengers to use the gear for recreational-sized BFT fishing, thus reducing potential safety concerns. Green-stick gear has been used on charter vessels for several years, including on for-hire trips, and neither existing green-stick gear use or use of the gear as proposed raised novel or substantial safety concerns.

Comment 5: If NMFS authorizes harpoon gear use on HMS CHB vessels, NMFS should allow permit holders a category change (not currently allowed for the 2008 fishing year as the May 31 deadline has passed) so that vessels could make use of the HMS CHB harpoon authorization this year.

Response: As NMFS is not implementing the proposed HMS CHB harpoon authorization at this time, allowances for permit category changes are not needed at this time.

Sea Turtle Control Device

Comment 1: NMFS should require a sea turtle control device in PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles.

Response: The proposed and final rule do require a sea turtle control device in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles. The implementation of sea turtle bycatch mitigation measures in the PLL and BLL fisheries, in accordance with the 2004 BiOp, which includes the mandatory use of circle hooks in the PLL fishery, possession and use of sea turtle handling and release gears in the PLL and BLL fisheries, and mandatory participation in protected species safe handling and release workshops, has reduced the post-release mortality of sea turtles. Sea turtle control devices have been recommended in these fisheries and are now required to better enable fishermen to remove fishing gear from sea turtles. Maximizing the removal of fishing gear from sea turtles results in improved post-release mortality.

Comment 2: NMFS should require two sea turtle control devices instead of one in order to better control sea turtles by securing both front flippers.

Response: NMFS considered requiring two sea turtle control devices instead of one in order to better control sea turtles by securing both front flippers, but did not prefer this as an alternative. Some BLL vessels are small and requiring two devices onboard is impractical, at this time, due to limited available space. Also, requiring the use of two devices when there are often only two crew members onboard raises concerns about safety at sea, especially in heavy seas and/or currents when one crew member must remain at the wheel while the other crew member retrieves the longline gear. In such circumstances, one crew member could reasonably be expected to use one sea turtle control device and remove fishing gear from the sea turtle, while the use of two devices and removal of the fishing gear would be an unreasonable expectation.

Comment 3: NMFS should not require a sea turtle control device in PLL and BLL fisheries because the shark fishing fleet cannot afford the device to meet the requirement.

Response: NMFS considered cost of the sea turtle control devices when developing this requirement and made options available for construction of the devices with inexpensive materials. The amount of time required for construction of these devices is minimal. Fishermen may already have many of these materials on hand. Construction costs for the T&G ninja sticks and turtle tether range from $25 to $85. Only one device is required to be carried onboard and used.

Changes from the Proposed Rule (73 FR 24922; May 6, 2008)

NMFS made seven changes to the proposed rule as outlined below.

1. Following requests from an organization representing a portion of the Atlantic tunas commercial handgear fishery and discussion by the HMS Advisory Panel at its October 2007 meeting, NMFS proposed authorization of harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels. NMFS requested public comment on the potential authorization of the gear, for both for-hire and non-for-hire fishing trips. After considering comment received during the comment period and discussions of the issue at the April 2008 HMS Advisory Panel meeting, both of which revealed little public support for the action, and the implications of authorizing a directed fishing gear that is used almost exclusively to target BFT, at this time, NMFS has decided to maintain the status quo regarding authorized harpoon gear use in the Atlantic tuna fisheries. For more information, please see the Response to Comments section. The selection of the status quo alternative regarding this subject does not preclude NMFS from taking future action regarding fishing gear authorization, in general or specifically regarding harpoon use.

2. In § 635.21, a clarification of how green-stick gear will be allowed for Atlantic Tunas Longline permitted vessels is made that establishes a minimum allowable hook size restriction for J-hooks used with green-stick gear. J-hooks used with green-stick gear onboard Atlantic Tunas Longline permitted vessels may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. In the Gulf of Mexico, PLL vessels are prohibited from using live bait in order to reduce the incidental catch of Atlantic billfish. NMFS is concerned about the effect that the 20 J-hook allowance, as described above, may have on enforcement of the live bait prohibition because fishing rigs that catch live bait utilize small J-hooks. The possession of such J-hooks is currently prohibited. NMFS' concern is that bait catching rigs could be used under the guise of green-stick gear, thus making enforceability of the live bait prohibition more difficult. In the proposed rule, NMFS sought public comment on establishing a minimum hook size for J-hooks allowed with green-stick gear onboard Atlantic Tunas Longline permitted vessels and received comments in favor of such a restriction. The minimum size limit for J-hooks in specific units of length is necessary as hook sizes such as 1/0, 2/0, 3/0, etc. are not standardized among hook manufacturers. The 1.5 inch minimum length limit will prevent the use of small hooks used with bait catching rigs which are normally 1/0 sized hooks or smaller. A 1.5 inch J-hook is approximately the size of a 2/0 or 3/0 standard J-hook depending on the manufacturer and style. J-hooks used

with green-stick gear when fishing for Atlantic tunas (usually 7/0 to 11/0) are much larger than the 1.5 inch minimum size limit established by this action. This minimum J-hook size limit only applies to Atlantic Tunas Longline permitted vessels; however, it applies to these vessels throughout the Atlantic.

3. In § 635.71, a prohibition is established for the possession and use of J-hooks onboard a vessel that has pelagic longline gear onboard, except when green-stick gear is onboard. The addition of this prohibition is necessary to better distinguish between regulations that apply to PLL vessels when green-stick gear is or is not onboard and to establish the way that green-stick gear will be managed. Regulations requiring the possession and use of circle hooks were established at 69 FR 40734 (July 6, 2004). These regulations required vessels fishing in the Northeast Distant gear restricted area (NED) and that have PLL gear onboard to only possess and use 18/0 or larger circle hooks with an offset not to exceed 10 degrees and when fishing outside the NED and having PLL gear onboard, to only possess and use 18/0 or larger circle hooks with an offset not to exceed 10 degrees and 16/0 or larger non-offset circle hooks.

4. In § 635.71, a prohibition of the use of J-hooks with pelagic longline is established. This prohibition is established for the same reason described in change number 3 above.

5. In § 635.71, a prohibition of the possession of more than 20 J-hooks onboard a vessel when possessing both pelagic longline gear, as described at § 635.21 (c), and green-stick gear is established. This prohibition establishes the way that green-stick gear will be managed.

6. In § 635.71, a prohibition of the use of more than 10 hooks at one time with each green-stick gear is established. This prohibition establishes the way that green-stick gear will be managed.

7. In § 635.71, a prohibition of the possession and use of J-hooks smaller than 1.5 inch (38.1 mm) onboard Atlantic Tunas Longline permitted vessels is established for the same purpose as explained in change number 2 above.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act and ATCA. NMFS has determined that this final rule is necessary for the management of Atlantic tunas and protection and conservation of sea turtles consistent with the Magnuson-Stevens Act, including the national standards; the ESA; and other applicable law.

NMFS prepared an EA for this action and a notice of availability was published with the proposed rule on May 6, 2008 (73 FR 24922). This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications under E.O. 13132. There are no new information collection requirements proposed by this rule for Purposes of the Paperwork Reduction Act.

In compliance with 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated impacts of the final rule and any significant alternatives to the final rule that could minimize significant economic impacts on small entities. Each of the statutory requirements of section 604 has been addressed, and a summary of the FRFA is provided below.

Section 604(a)(1) requires the Agency to state the objective and need for the rule. As stated in the preamble of the final rule, the objective of this final rule is to ensure fishermen harvest Atlantic tunas within quotas, size limits, or other established limitations and to distinguish green-stick fishing gear from current definitions of other authorized gear types. Additionally, the final rule addresses sea turtle control devices in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles thus maintaining consistency with the 2004 Biological Opinion (BiOp) for the Atlantic PLL fishery and to increase safety at sea for fishermen when handling sea turtles caught or entangled in longline fishing gear.

Section 604(a)(2) requires the Agency to summarize significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS received several comments on the proposed rule and draft EA during the public comment period. A summary of these comments and the Agency's responses are included above. NMFS did not receive any comments specific to the Initial Regulatory Flexibility Analysis (IRFA). During the public comment period, NMFS received an economic comment that NMFS should not require a sea turtle control device in PLL and BLL fisheries because the shark fishing fleet cannot afford the device to meet the requirement. NMFS understands that there may be some negative economic impact from this requirement and has attempted to minimize these impacts by allowing the devices to be constructed with low cost materials. Construction costs for the sea turtle control devices range from $25-85 and may be constructed with materials that fishermen may already have on hand, thus reducing the construction cost. NMFS believes that the economic impacts to fishermen are not likely to be large with this final action. No changes were made to this final action as a result of this comment.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the final rule will apply. The final rule to authorize green-stick fishing gear for the harvest of Atlantic tunas, including BFT, and require sea turtle control devices in Atlantic HMS PLL and BLL fisheries could directly affect 3,616 Atlantic Tunas General, 3,901 HMS CHB, and 218 Atlantic Tunas Longline category permit holders (permit numbers as of November 30, 2007). All of these permit holders are considered small business entities according to the Small Business Administration's standard for defining a small entity.

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, record keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirements of the report or record. None of the alternatives considered for this final rule will result in additional reporting and recordkeeping requirements. New compliance requirements will occur under the action to require the possession and use of a sea turtle control device onboard PLL and BLL vessels; however, the economic impacts are not expected to be significant.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize any significant economic impact on small entities consistent with the stated objectives of applicable statutes. NMFS believes that in regard to the portion of the final rule requiring a sea turtle control device, impacts on small entities are minimized through the development of options for fishermen to construct the device at minimal cost, thus simplifying compliance for all entities including small entities. Similarly, the design standards used to allow construction of a sea turtle control device at minimal cost satisfies the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ESA.

As described below, NMFS considered eight different alternatives to authorize fishing gear in Atlantic tuna fisheries to increase operational flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP; to allow harvest of Atlantic tunas with a gear that is generally efficient in harvesting target species and, at the same time, is low in bycatch and bycatch mortality; and to require a sea turtle control device in the PLL and BLL fisheries to achieve and maintain low post-release mortality of sea turtles. Below, NMFS provides justification for selection of the final action to achieve the desired objectives.

Alternative A1 is a no action, or the status quo alternative. This alternative would maintain existing regulations for harvesting Atlantic tunas, thereby allowing green-stick gear use only as allowed under the current definitions and regulations for longline or handgear based on the gear configuration. Under Alternative A1, there would be no change in the existing regulations and, as such, no change in the current baseline economic impacts.

The no action alternative would instead continue to consider green-stick gear as being within the longline definition if 3 or more hooks are attached and as handgear if 2 or fewer hooks are attached. The allowable use of the gear in this way impedes operational and economic efficiency in the Atlantic Tunas General category or HMS CHB category because fishermen have used green-stick gear rigged with up to 10 hooks historically for Atlantic tunas. Under alternative A1, the social and economic impacts are expected to be minimal, although unquantified social and economic impacts may occur to Atlantic Tunas General category and HMS CHB permitted vessel holders with the status quo because they would not be allowed to use green-stick gear with 3 hooks or more, as they have historically, unless they purchased an Atlantic Tunas Longline permit and other associated limited access permits for swordfish and shark. This alternative was not selected because other alternatives increase operational flexibility in the fishery while still achieving the objectives of the Consolidated HMS FMP and allow fishermen additional opportunities to fulfill U.S. quota allocations.

Under selected Alternative A2, which was preferred in the proposed rule, green-stick gear will be defined and authorized for use in the commercial Atlantic tuna fishery for BAYS and BFT by Atlantic Tunas General category vessels. Vessels fishing under the Atlantic Tunas General category will continue to be subject to all current HMS regulations for that category (such as bag and size limits). NMFS does not anticipate greatly increased landings from Atlantic Tunas General category vessels as a result of this rule because green-stick gear has been used in HMS fisheries since at least the mid-1990s. While NMFS does not anticipate greatly increased landings, Alternative A2 could result in a minor increase of overall effort deployed by this category of permit holders. This could occur if additional fishermen become aware of green-stick gear efficiency in catching Atlantic tunas and of the high quality of fish product that can be delivered to the dock as a result. Higher quality fish product often commands high ex-vessel prices, and thus could potentially improve the profitability of trips. Under Alternative A2, authorization of green-stick gear use is expected to have generally positive social impacts as the gear is popular with Atlantic Tunas General category permit holders in areas of the Atlantic where it has been used.

The economic impacts under Alternative A2 are expected to be positive. Authorization of green-stick gear for harvest of Atlantic tunas will allow Atlantic Tunas General category permit holders additional opportunities for harvest. Tuna and other species harvested commercially with green-stick gear are usually high in quality and command higher prices due to the speed with which the fish are brought to the vessel, stored on ice, transported to the dock, and sold. Economic benefits may be realized through continued, and possibly increased, harvest of Atlantic tunas. Use of this gear may result in an unknown number of additional trips. The economic benefits may be minimal, however, as green-stick gear has been used in U.S. Atlantic tuna fisheries for several years and potential increases above existing levels of use as a result of this rule are expected to be minimal.

Green-stick gear ranges in cost from $1,300-$3,300 for the fiberglass pole. Completely outfitting a vessel with hydraulic spool and other tackle to use the gear would cost between $4,000-$6,000 depending on the size of the rig. Therefore, the total cost of outfitting a vessel to fish with green-stick gear would cost between $5,300-9,300. Anecdotal information indicates that some fishermen may run mainlines from outriggers, a flying bridge, or a tuna tower, which would not be as costly. Outfitting costs are discretionary for fishermen as the gear is not required to participate in the fishery. This gear will be authorized for use from properly permitted vessels only. The current cost of a Federal vessel permit is $28.00 per year.

Under selected Alternative A3, which was a preferred alternative in the proposed rule, green-stick gear will be defined as in Alternative A2 above and authorized for use in the commercial Atlantic tuna fishery for BAYS and BFT by HMS CHB category vessels. This alternative will also authorize green-stick gear for recreational harvest of Atlantic tunas when an HMS CHB permitted vessel is on a for-hire trip. NMFS prefers this alternative because HMS CHB vessels may sell Atlantic tunas whether the vessel is for-hire or not-for-hire. Additionally, NMFS received public comment that HMS CHB vessels desired to have the option of using green-stick gear on for-hire trips. Vessels fishing under the HMS CHB category will continue to be subject to all current HMS regulations for that category. Alternative A3 is expected to have positive social and economic impacts similar to those described under Alternative A2 above, but with the added economic benefits associated with authorizing the use of green-stick gear for recreational harvest of Atlantic tunas even when an HMS CHB permitted vessel is on a for-hire trip.

Under selected Alternative A4, which was a preferred alternative in the proposed rule, green-stick gear will be defined, in this final rule, as in Alternative A2 and authorized for use in the directed commercial Atlantic BAYS tuna fishery and allow for the incidental retention of BFT by Atlantic Tunas Longline category vessels. Green-stick gear can currently be used with more than two hooks by Atlantic Tunas Longline permitted vessels under current target catch and gear (i.e., circle hook) requirements. Alternative A4 will distinguish green-stick gear from longline gear thus allowing green-stick gear to be fished in PLL and BLL closed areas if existing regulations for removal of PLL and BLL gear are met. These regulations state that a vessel is considered to have PLL gear onboard when it has onboard a power-operated longline hauler, a mainline, floats capable of supporting the mainline, and leaders (gangions) with hooks. Likewise, a vessel is considered to have BLL gear onboard when it has onboard a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact between the mainline and the ocean bottom, and leader (gangions) with hooks. For closed areas respective to both PLL and BLL gear, removal of any one of these elements constitutes removal of the PLL or BLL gear. Atlantic Tunas Longline permitted vessels will continue to be

subject to current HMS PLL or BLL regulations, whichever is applicable, including the closed areas and circle hook requirements except that up to 20 J-hooks will be allowed onboard if green-stick gear is also onboard for use only with the green-stick gear. This provision to allow up to 20 J-hooks is intended to facilitate the high speed trolling methods used when fishing with green-stick gear. J-hooks possessed or used when green-stick gear is onboard may only be used with green-stick gear and may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. Current requirements to use only circle hooks on PLL gear will remain unchanged.

Alternative A4 is expected to have positive social and economic impacts particularly for fishermen holding Atlantic Tunas Longline permits. Public and HMS Advisory Panel member support has been expressed for this alternative as described in chapter four of the Final EA. Authorization of green-stick for harvest of Atlantic tunas will allow Atlantic Tunas Longline category permit holders additional opportunities for harvest. Economic benefits may be realized in similar fashion to Alternatives A2 and A3 above through increased need for fish processing and the sale of additional fishing gear and supplies. The economic benefits for the fishing community may be minimal, however as green-stick gear has been and continues to be used in U.S. Atlantic tuna fisheries and increases beyond existing levels are expected to be minimal. Vessel outfitting costs are similar to those described in A2 above.

Alternative B1 would maintain the status quo regarding harpoon use in the Atlantic tuna fisheries. Under this selected alternative, the authorized gears for Atlantic tunas fishing by HMS CHB permitted vessels would remain the same. Harpoon use is currently authorized only for vessels permitted in the Atlantic Tunas General and Harpoon categories. Harpoon gear is selective gear that is used to capture only one large pelagic fish (primarily BFT, but also swordfish) at a time. Bycatch and bycatch mortality of commercial handgear is considered to be low, particularly for harpoons, which are thrown individually at a fish, determined by the fisherman to be greater than the minimum commercial size. There is no information or evidence of interactions between harpoon users targeting Atlantic tunas and threatened or endangered sea turtles, marine mammals, or other protected resources. There were 3,901 HMS CHB permitted vessels as of November 30, 2007. Focusing on the area where harpoon gear has historically been used to capture commercial-sized BFT, there were 91 HMS CHB permitted vessels in Maine, 53 in New Hampshire, 644 in Massachusetts, and 159 in Rhode Island. Under Alternative B1, NMFS anticipates neutral impacts on permitted HMS vessels, which could continue to fish under the Atlantic Tunas General and Angling category regulations using existing authorized gear. Total Atlantic BFT General category revenues, which included sale of commercial-sized BFT by HMS CHB vessels, for the 2006 fishing year were approximately $2.6 million. General category BFT revenues for 2005 and 2004 were approximately $3.8 million and $5.4 million, respectively (in nominal dollars). General category BFT fishing year quotas, adjusted as necessary for underharvest, have not been met since 2004, when landings amounted to 96 percent of the quota. Atlantic Tunas General category landings, as a percentage of adjusted General category quota, were 33 percent (234 mt out of 707.3 mt) for 2005, 14 percent for 2006 (165 mt out of 1,163.3 mt), and 19 percent for 2007 (121 mt out of 643.6 mt).

Alternative B2 would authorize harpoon gear for the commercial harvest of Atlantic tunas, including BFT, for HMS CHB permitted vessels. Available vessel trip report data indicate that for Atlantic tunas fishing, harpoon gear is only used to target BFT. Under this alternative, HMS CHB vessels would be able to use harpoon gear to fish for and retain BFT greater than 73 inches curved fork length. HMS CHB vessels may currently fish under the Atlantic Tunas General category regulations and may fill the daily retention limit for either the Atlantic Tunas General category or the HMS Angling category. The size category of the first BFT retained determines the fishing category applicable to the vessel that day. This alternative would not change the number or size of BFT allowed to be retained on an HMS CHB vessel, but would provide HMS CHB fishermen the opportunity to use harpoon gear in filling the Atlantic Tunas General category daily retention limit.

Sub-alternative B2a would allow harpoon gear use on all types of HMS CHB trips. Sub-alternative B2b, the preferred alternative in the proposed rule, would limit harpoon use to non-for-hire trips. It is NMFS' understanding that due to safety and liability concerns, only vessel captain and crew would be involved in harpoon fishing (i.e., no other passengers would be offered the opportunity to use the gear). Under this alternative, there would be no incentive to harpoon a recreational sized fish (27 to less than 73 inches) to fill the Angling category retention limit (to satisfy expectations of individuals chartering the vessel). With effort focused on commercial-sized BFT, bycatch of undersized fish and associated fish mortality is expected to be minimal, particularly as the size of BFT targeted by for-hire HMS CHB vessels fall with in the school and large school BFT size classes, i.e. (27-59 inches).

The General category quota and overall U.S. TAC are designed to allow for BFT rebuilding, and the General category BFT retention limit is specified to allow fishing opportunities over the duration of the General category season and in all areas, without exceeding the General category BFT quota. This alternative would not be expected to result in an expanded geographic area of harpoon use for BFT, which has historically been off New England, and primarily on the fishing grounds off Massachusetts, New Hampshire, and Maine. Therefore, authorization of harpoon gear in the HMS CHB category would not be expected to have ecological impacts beyond those previously analyzed in the Consolidated HMS FMP and in the 2007 Fishing Year Atlantic BFT Quota Specifications and Effort Controls EA.

Alternative B2 would have positive social and economic impacts, specifically for those vessels that have success harpooning BFT that may be available at the water's surface. To the extent that a fisherman could harpoon BFT at the surface when the fish are present at the water's surface, Alternative B2 could increase the potential of filling the General category daily retention limit and of gaining more ex-vessel revenue per trip. NMFS anticipated that the number of BFT that would be caught with harpoon gear by HMS CHB vessels would be low. Alternative B2 may have slightly negative social and economic impacts for existing HMS CHB operators due to the potential for Atlantic Tunas General or Harpoon category permit holders to change to the HMS CHB category, potentially increasing competition in the HMS CHB sector and potentially resulting in lower profits for existing permit holders. Alternative B2 was not selected because, based on public comment, NMFS has reconsidered the authorization of an additional directed fishing gear type for BFT in the HMS CHB category at this time. After consideration of recent HMS AP

discussion and public comment on the proposed action, NMFS believes that harpoon use by HMS CHB vessels could result in increased discard mortality of BFT over the discard mortality that occurs with gear currently authorized for HMS CHB use or with green-stick gear. Based on the relative lack of public support, and the concerns raised by NMFS and the public, including bycatch, enforcement, safety, and BFT stock status generally, NMFS has decided, at this time, to maintain the status quo regarding authorized harpoon use, i.e., authorized harpoon use by the Atlantic Tunas General and Atlantic Tunas Harpoon permit categories only.

Alternative C1, which is the status quo alternative, would continue existing ecological benefits of the current requirements for possession and use of sea turtle bycatch mitigation equipment such as low post-release mortality of sea turtles and other by catch species. Alternative C1 is not selected because it would not provide for additional post-release survival benefits that may be achievable under preferred Alternative C2. Currently one type of sea turtle control device, the turtle tether, is recommended for possession and use, but is not required. Under the status quo, the benefit of better control of large sea turtles not boated and improvements in hook and fishing gear removal that would result in reduced post-release mortality would not be fully realized, but NMFS is unable to quantify the number of sea turtle mortalities that might occur in the absence of this benefit.

Under Alternative C1, the social and economic impacts would be minimal as sea turtle bycatch mitigation gear is currently required in the PLL fishery and sea turtle control devices are recommended, but not required. Any safety-at-sea benefit from improved control of large sea turtles not boated would not be fully realized with Alternative C1.

Under selected Alternative C2, which was a preferred alternative in the proposed rule, social and economic impacts may be positive in that further reduction in sea turtle mortalities achieved by enabling fishing gear removal may aid in continuation of the PLL fishery. Reducing the mortality of sea turtles in the PLL fishery reduces the likelihood that the performance targets for incidental take and mortality of sea turtles in the PLL fishery that were established in the 2004 BiOp are exceeded. Exceeding the performance targets in the 2004 BiOp could result in closure of the PLL fishery in the Gulf of Mexico and/or reinitiation of Section 7 consultation under the Endangered Species Act. Also, a safety-at-sea benefit from the use of sea turtle control devices will be realized as fishermen using the gear can more easily control large sea turtles while removing fishing hooks and lines. Other social and economic impacts of Alternative C2 are expected to be minimal. It is unknown how many vessels currently follow the recommendation to possess and use sea turtle control devices. Production models of the turtle tether cost from $200-$250 and may be constructed according to the design specifications for $40-$70. Production models of the T&G ninja sticks may be purchased for $175 and may be constructed according to the design specifications for approximately $25-$85. It is difficult to determine the number of Atlantic HMS permitted vessels that use longline and will be affected by this requirement as users of longline gear may possess any one of three permits; however, not all holders of these permits use longline gear. To estimate the total cost of outfitting each boat in the longline fleet with one sea turtle control device, NMFS totaled the number of Atlantic Tunas Longline, Shark Directed, or Shark Incidental permits, which produced an overestimate of the actual number of permitted vessels affected by the requirement. Based on the number of Atlantic Tunas Longline, Shark Directed, or Shark Incidental permitted vessels as of November 2007, it is estimated that the cost of outfitting the longline fleet with one turtle control device would range from $18,575, if all permit holders construct the least expensive device, to $185,750, if all permit holders purchase the most expensive model produced.

List of Subjects

50 CFR Part 600

Fisheries, Fishing, Fishing vessels, Foreign relations, Penalties, Reporting and recordkeeping requirements.

50 CFR Part 635

Fish, Fisheries, Fishing, Fishing vessels, Reporting and recordkeeping requirements, Management.

Dated: September 17, 2008.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, paragraph (v) table, under the heading ''IX. Secretary of Commerce,'' entries 1.I and 2 are revised and entry 1.M is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v)* * *

Fishery	Authorized gear types
* * * * * * *	
IX. Secretary of Commerce	
1. Atlantic Highly Migratory Species Fisheries (FMP):	
* * * * * * *	
I. Tuna recreational fishery	I. Speargun gear (for bigeye, albacore, yellowfin, and skipjack tunas only); Rod and reel, handline (all tunas); green-stick gear (HMS Charter/Headboat Category only).
* * * * * * *	
M. Tuna green-stick fishery	M. Green-stick gear.
2. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine, green-stick gear.

* * * * *

PART 635—-ATLANTIC HIGHLY MIGRATORY SPECIES

■ 3. The authority citation for part 635 continues to read as follows:

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

■ 4. In § 635.2, the definition for ''Green-stick gear'' is added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Green-stick gear means an actively trolled mainline attached to a vessel and elevated or suspended above the surface of the water with no more than 10 hooks or gangions attached to the mainline. The suspended line, attached gangions and/or hooks, and catch may be retrieved collectively by hand or

mechanical means. Green–stick does not constitute a pelagic longline or a bottom longline as defined in this section or as described at § 635.21(c) or § 635.21(d), respectively.

* * * * *

■ 5. In § 635.21:

■ a. Paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(ii)(A), (c)(5)(ii)(C)(*1*), (e)(1)(ii), (e)(1)(iii), and (e)(1)(v) are revised.

■ b. An introductory paragraph and paragraphs (c)(5)(i)(M), (c)(5)(iii)(C)(*3*), and (g) are added.

The revisions and additions read as follows:

§ 635.21 Gear operation and deployment restrictions.

The green-stick gear authorization requirements under paragraphs (c)(2)(v)(A), (c)(2)(v)(B), (c)(5)(iii)(C)(*3*), (e)(1)(ii), (e)(1)(iii), (e)(1)(v), and (g) of this section are effective on October 23, 2008. The sea turtle bycatch mitigation gear requirements under paragraphs (c)(2)(v)(D), (c)(2)(v)(G), (c)(5)(i) introductory text, (c)(5)(i)(M), (c)(5)(ii)(A), and (c)(5)(ii)(C)(*1*) of this section are effective on January 1, 2009.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) The vessel is limited to possessing onboard and/or using only 18/0 or larger circle hooks with an offset not to exceed 10 degrees. The outer diameter of the circle hook at its widest point must be no smaller than 2.16 inches (55 mm) when measured with the eye on the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis), and the distance between the circle hook point and the shank (i.e., the gap) must be no larger than 1.13 inches (28.8 mm). The allowable offset is measured from the barbed end of the hook and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side. The only allowable offset circle hooks are those that are offset by the hook manufacturer. If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook; and,

(B) The vessel is limited, at all times, to possessing onboard and/or using only whole Atlantic mackerel and/or squid bait, except that artificial bait may be possessed and used only with green-stick gear, as defined at § 635.2, if green-stick gear is onboard; and,

* * * * *

(D) Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section, on the list of ''NMFS-Approved Models for Equipment Needed for the Careful Release of Sea Turtles Caught In Hook and Line Fisheries,'' must be carried onboard, and must be used in accordance with the handling requirements specified in paragraphs (c)(2)(v)(E) through (G) of this section; and,

* * * * *

(G) *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear, specified in paragraph (c)(2)(v)(D) of this section, must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in paragraph (c)(2)(v)(C) of this section. Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured, if possible, with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using an approved line cutter from the list specified in paragraph (c)(2)(v)(D) of this section. If the hook can be removed, it must be removed using a long-handled dehooker from the list specified in paragraph (c)(2)(v)(D) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (c)(2)(v)(C) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

* * * * *

(5) * * *

(i) *Possession and use of required mitigation gear.* Required sea turtle bycatch mitigation gear, which NMFS has approved under paragraph (c)(5)(iv) of this section as meeting the minimum design standards specified in paragraphs (c)(5)(i)(A) through (M) of this section, must be carried onboard, and must be used to disengage any hooked or entangled sea turtles in accordance with the handling requirements specified in paragraph (c)(5)(ii) of this section.

* * * * *

(M) *Turtle control devices.* Effective January 1, 2009, one turtle control device, as described in paragraph (c)(5)(i)(M)(*1*) or (*2*) of this section, is required onboard and must be used to secure a front flipper of the sea turtle so that the animal can be controlled at the side of the vessel. It is strongly recommended that a pair of turtle control devices be used to secure both front flippers when crew size and conditions allow. Minimum design standards consist of:

(*1*) *Turtle tether and extended reach handle.* Approximately 15-20 feet of 1/2-inch hard lay negative buoyance line is used to make an approximately 30-inch loop to slip over the flipper. The line is fed through a 3/4-inch fair lead, eyelet, or eyebolt at the working end of a pole and through a 3/4-inch eyelet or eyebolt in the midsection. A 1/2-inch quick release cleat holds the line in place near the end of the pole. A final 3/4-inch eyelet or eyebolt should be positioned approximately 7-inches behind the cleat to secure the line, while allowing a safe working distance to avoid injury when releasing the line from the cleat. The line must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater. There is no restriction on the type of material used to construct this handle, as long as it is sturdy. The handle must include a tag line to attach the tether to the vessel to prevent the turtle from breaking away with the tether still attached.

(*2*) *T&G ninja sticks and extended reach handles.* Approximately 30-35 feet of 1/2-inch to 5/8-inch soft lay polypropylene or nylon line or similar is fed through 2 PVC conduit, fiberglass, of similar sturdy poles and knotted using an overhand (recommended) knot at the end of both poles or otherwise secured. There should be approximately

18-24 inches of exposed rope between the poles to be used as a working surface to capture and secure the flipper. Knot the line at the ends of both poles to prevent line slippage if they are not otherwise secured. The remaining line is used to tether the apparatus to the boat unless an additional tag line is used. Two lengths of sunlight resistant 3/4-inch schedule 40 PVC electrical conduit, fiberglass, aluminum, or similar material should be used to construct the apparatus with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum of 6 feet (1.83 m), whichever is greater.

(ii) * * *

(A) Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(A) through (D) of this section, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as required by paragraphs (c)(5)(i)(E) through (M) of this section, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in paragraph (a)(3) of this section, and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1) of this title.

* * * * *

(C) * * *

(*1*) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. A front flipper or flippers of the turtle must be secured with an approved turtle control device from the list specified in paragraph (c)(2)(v)(D) of this section. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as required by paragraph (c)(5)(i) of this section. If the hook can be removed, it must be removed using a long-handled dehooker as required by paragraph (c)(5)(i) of this section. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful release protocols and handling/release guidelines required in paragraph (a)(3) of this section, and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title for additional information.

* * * * *

(iii) * * *

(C) * * *

(*3*) If green-stick gear, as defined at § 635.2, is onboard, a vessel may possess up to 20 J-hooks. J-hooks may be used only with green-stick gear, and no more than 10 hooks may be used at one time with each green-stick gear. J-hooks used with green-stick gear may be no smaller than 1.5 inch (38.1 mm) when measured in a straight line over the longest distance from the eye to any other part of the hook. If green-stick gear is onboard, artificial bait may be possessed, but used only with green-stick gear.

* * * * *

(e) * * *

(1) * * *

(ii) *Charter/Headboat.* Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General.* Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick.

* * * * *

(v) *Longline.* Longline and green-stick.

* * * * *

(g) *Green-stick gear.* Green-stick gear may only be utilized when fishing from vessels issued a valid Atlantic Tunas General, HMS Charter/Headboat, or Atlantic Tunas Longline category permit. The gear must be attached to the vessel, actively trolled with the mainline at or above the water's surface, and may not be deployed with more than 10 hooks or gangions attached.

■ 6. In § 635.71:

■ a. Paragraph (a)(23) is revised.

■ b. Paragraphs (b)(36) through (40) are added.

The revision and additions read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(23) Fail to comply with the restrictions on use of pelagic longline, bottom longline, gillnet, buoy gear, speargun gear, or green-stick gear as specified in § 635.21(c), (d), (e)(1), (e)(3), (e)(4), (f), or (g).

* * * * *

(b) * * *

(36) Possess J-hooks onboard a vessel that has pelagic longline gear onboard, and that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, except when green-stick gear is onboard, as specified at § 635.21(c)(2)(v)(A) and (c)(5)(iii)(C)(*3*).

(37) Use or deploy J-hooks with pelagic longline gear from a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

(38) Possess more than 20 J-hooks onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico, when possessing onboard both pelagic longline gear, as described at § 635.21(c), and green-stick gear as defined at § 635.2.

(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear.

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any other part of the hook, when fishing with or possessing green-stick gear onboard a vessel that has been issued, or is required to have, a limited access swordfish, shark, or tuna longline category permit for use in the Atlantic Ocean, including the Caribbean Sea and the Gulf of Mexico.

* * * * *

[FR Doc. E8–22261 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070817467–81179–04]

RIN 0648–AV90

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 19; Correcting Amendment

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

ACTION: Final rule.

SUMMARY: NMFS is correcting regulatory text implementing measures that were

approved as part of Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). This correction specifies the September 1 through October 1 Elephant Trunk Sea Scallop Access Area (ETAA) seasonal closure, which was inadvertently removed from the regulations in the final rule for Framework 19. This rule also corrects an incorrect reference to the Nantucket Lightship Access Area included in the regulations for the ETAA, and includes the total allowable catch (TAC) values.

DATES: Effective September 23, 2008.

ADDRESSES: An environmental assessment (EA) was prepared for Framework 19 that describes the action and other alternatives considered, and provides a thorough analysis of the impacts of the measures and alternatives. Copies of Framework 19, the EA, and Initial Regulatory Flexibility Analysis are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The final rule for Framework 19 includes the Final Regulatory Flexibility Analysis.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The final rule for Framework 19 to the FMP was published on May 29, 2008, (73 FR 30790). The preamble text explained that NMFS was maintaining the September 1 through October 31 ETAA seasonal closure to provide protection for sea turtles during that period in the ETAA. However, in the instructions for amending § 648.59, which included the seasonal closure, the Framework 19 final rule stated that the paragraph that implemented the closure (§ 648.59(e)(3)) was to be ''removed and reserved.'' This instruction was inadvertent and, as a result, the regulations effective July 1, 2008, did not include the seasonal closure.

This final rule also corrects a mistaken reference to the Nantucket Lightship Access Area that was included in the ETAA regulations and provides the TAC specifications for limited access general category vessels fishing in the ETAA. The regulations in § 648.59(e)(4)(ii), that became effective on June 1 in the Framework 19 final rule, included the TACs for general category vessels fishing in the ETAA prior to the effective date of the LAGC permit requirements on July 1, 2008, but omitted the TAC values for LAGC scallop vessels.

In Framework 19, the Council recommended elimination of the ETAA seasonal closure. The proposed rule for Framework 19 described NMFS's disapproval of the elimination of the ETAA seasonal closure and maintained the seasonal closure in the proposed regulations for public comment. The disapproval of the Council's recommendation to eliminate the ETAA seasonal closure was the subject of public comments on the Framework 19 proposed rule. NMFS has already responded to comments in the Framework 19 final rule. The seasonal closure has been in effect since the ETAA opened in 2007. The change of the reference in § 648.59(e)(4)(ii)(A) from the Nantucket Lightship Access Area to the ETAA and the inclusion of the TAC in that paragraph do not change the measures included in the Framework 19 final rule and are for clarification only. Therefore, the correction does not change the operating practices of the fishery.

Classification

NMFS has determined that this correcting amendment is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule corrects regulations implemented as part of Framework 19, which was determined to be not significant for purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause Pursuant to 5 U.S.C.553(b)(B) to waive prior notice and an opportunity for public comment on this action, as notice and comment would be contrary to the public interest. The opportunity for public comment on the ETAA seasonal closure was provided through the proposed rule for Framework 19. Allowing for public comment would give the impression that the ETAA seasonal closure is subject to review and approval by NMFS, despite NMFS having already decided to disapprove the Council's recommendation to remove the seasonal closure and leave the ETAA seasonal closure in place. This would be contrary to public interest as it would generate confusion with respect to the rulemaking process for Framework 19. The AA further finds pursuant to 5 U.S.C. 553(d)(3) good cause to waive the thirty-day delayed effectiveness period. NMFS was only recently made aware of the inconsistency between the Framework 19 preamble and the regulations that became effective on July 1, 2008, and the closure under this correction began on September 1, 2008. This closure is important for the protection of sea turtles listed under the Endangered Species Act. Sea turtles are present in the Mid-Atlantic region, including the ETAA, from May through November. The ETAA seasonal closure reduces the potential for interactions between the scallop fishery and turtles from interactions with fishing gear by prohibiting scallop fishing in the area during September and October, when takes have been observed. A delay in the effectiveness of this reinstatement of the closure provision will increase the likelihood of injurious interactions between turtles and scallop fishing gear.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 17, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.59, paragraph (e)(3) is added and paragraph (e)(4)(ii)(A) is revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

* * * * *

(e) * * *

(3) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, from September 1 through October 31 of each year the Elephant Turnk Access Area is open to scallop fishing as a Sea Scallop Access Area, unless transiting pursuant to paragraph (f) of this section.

(4) * * *

(ii) *LAGC scallop vessels.* (A) The percentage of the Elephant Trunk Access Area TAC to be allocated to

LAGC scallop vessels shall be specified in this paragraph (e)(4)(ii)(A) through the framework adjustment process and shall determine the number of trips allocated to LAGC scallop vessels as specified in paragraph (e)(4)(ii)(B) of this section. LAGC vessels shall be allocated 1,067,000 lb (484 mt) in fishing year 2008, which is 5 percent of the 2008 Elephant Trunk Access Area TAC. LAGC vessels shall be allocated 785,700 lb (356 mt) in fishing year 2009, which is 5 percent of the 2009 Elephant Trunk Access Area TAC. The 2009 general category TAC may be reduced per § 648.60(a)(3)(i)(E)(*2*).

* * * * *

[FR Doc. E8–22259 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080326475–8686–02]

RIN 0648–XK61

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific sardine. This action is necessary because the directed harvest allocation total for the third allocation period (September 15 - December 31) is projected to be reached. From the date of closure until the new fishing season begins on January 1, 2009, Pacific sardine may only be harvested incidental to other fisheries, with incidental harvest constrained by a 20-percent by weight incidental catch rate. Fishing vessels must be in the process of offloading at the time of closure.

DATES: Effective 12:01 am Pacific Standard Time September 23, 2008, through January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the Federal Register establish the total harvest guideline (HG) and allowable harvest levels for each Pacific sardine fishing season (January 1 - December 31). The total HG for the 2008 Pacific sardine fishing season (January 1, 2008 - December 31, 2008) is 89,093 mt and is divided into a directed harvest fishery of 80,184 mt and an incidental fishery of 8,909 mt. These directed and incidental harvest ammounts are subdivided throughout the year in the following way: January 1-June 30, 26,550 mt is allocated for directed harvest with an incidental set-aside of 4,633 mt; July 1-September 14, 34,568 mt plus any portion not harvested from the initial allocation is allocated for directed harvest with an incidental set-aside of 1,069 mt; September 15-December 31, 19,066 mt plus any portion not harvested from earlier allocations is allocated for directed harvest with an incidental set-aside of 3,207 mt (73 FR 30811, May 29, 2008).

If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. The incidental fishery will also be constrained to a 20-percent by weight incidental catch rate when Pacific sardine are landed with other CPS to minimize targeting of Pacific sardine and to maximize landings of harvestable stocks. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will be automatically adjusted to account for the discrepancy.

Under 50 CFR 660.509 if the total HG or these apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the Federal Register the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution the live bait portion of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the September 15 - December 31 directed harvest of Pacific sardine. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel.

Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 18, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–22253 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XK62

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Pot Catcher Processors in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Pacific cod total allowable catch (TAC) allocated to pot catcher processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 19, 2008, through 2400 hrs, A.l.t., December 31, 2008.

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

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

The 2008 Pacific cod TAC allocated to pot catcher processors in the BSAI is 2,274 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2008 Pacific cod directed fishing allowance allocated to pot catcher processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by pot catcher processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 16, 2008.

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

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

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

Dated: September 17, 2008.

Emily H. Menashes

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

[FR Doc. E8–22208 Filed 9–18–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XK72

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

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

ACTION: Temporary rule; closure.

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

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 19, 2008, through 1200 hrs, A.l.t., October 1, 2008.

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

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

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

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

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 17, 2008.

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

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

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

Dated: September 18, 2008.

Alan D. Risenhoover

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

[FR Doc. E8–22209 Filed 9–18–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 185
Tuesday, September 23, 2008

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. AMS–FV–08–0022; FV08–915–1 PR]

Avocados Grown in South Florida; Revisions to Grade and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the grade and container requirements currently prescribed under the marketing order for avocados grown in South Florida (order). The order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This change would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. This rule would also make changes to the container and container marking requirements under the order. These changes would provide a grade and pack to meet consumer demand and would improve the identification and traceability of avocado shipments.

DATES: Comments must be received by October 8, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793 or E-mail: *William.Pimental@usda.gov or Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the grade and container requirements currently prescribed under the order. This rule would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. This rule would also make changes to the container and container marking requirements established under the order. These changes would provide a grade and pack to meet consumer demand and would improve the identification and traceability of avocado shipments. These changes were unanimously recommended by the Committee during a number of meetings over the past several months.

Section 915.51 of the order provides, in part, the authority to issue regulations establishing specific grade and container requirements for avocados. Section 915.52 of the order provides the authority for the modification, suspension or termination of established regulations. The requisite grade and container requirements are specified under §§ 915.305 and 915.306. These sections specify, in part, the grade, container, and container marking requirements for fresh shipments of avocados grown in South Florida.

Standard containers refer to those containers specifically authorized in § 915.305(a), which can be used for shipments both inside and outside of the production area. Nonstandard containers refer to containers other than those authorized in § 915.305(a), and can only be used when shipping avocados within the production area.

This rule would make several changes to the grade and container provisions established under the order. This rule would establish a minimum grade of a U.S. No. 2 for all avocados sold within the production area. It would also require that all nonstandard containers used for shipments within the production area be one bushel in size and that these containers be marked with the registered handler number or the name and address of the handler.

This rule would also require that all avocados sold be packed in new containers and that the containers be marked with the grade packed.

The first change would establish a minimum grade of a U.S. No. 2 for all avocados sold within the production area. Currently, only avocados handled in standard containers must meet the grade requirement of a U.S. No. 2. Avocados sold within the production area in nonstandard containers are not required to meet a minimum grade. This rule would modify § 915.306 so that all avocados sold to the fresh market in the production area, regardless of what type of container, must meet the minimum grade requirement of a U.S. No. 2.

In 1992, Hurricane Andrew decimated the Florida avocado production area leaving both avocados and containers in short supply. The industry recommended that the grade requirement be suspended for avocados sold within the production area in containers other than the standard containers defined in § 915.305. This change made more fruit available for shipment and allowed handlers to pack fruit in any obtainable container for shipment within the production area.

The industry has since recovered from the devastation caused by the hurricane. Production for the 2007–08 season was approximately 1.1 million bushels of avocados, nearly matching the level of production prior to Hurricane Andrew. However, since the grade change made following the hurricane, avocados shipped within the production area in nonstandard containers have not had to meet any specific grade requirements.

At the time of Hurricane Andrew, avocado shipments to production area markets accounted for around 12 percent of total shipments. Since that time, shipments to the production area have nearly doubled. For the last five seasons, shipments to the production area have accounted for around 23 percent of total shipments, making the production area one of the largest markets for Florida avocados.

In discussing this issue, Committee members stated that the absence of a grade requirement has resulted in poor quality avocados being offered for sale inside the production area. The past few seasons, the Committee office and members of the industry have been receiving an increasing number of negative comments regarding the quality of fruit sold in the production area. These comments indicate there is an increasing demand for higher quality fruit within the production area.

Production area produce buyers and brokers are looking for higher quality fruit to meet the demands of production area consumers. However, buyers have expressed that without a minimum grade requirement it is difficult to know the quality of the avocados being purchased. The level of quality received varies between good and poor quality. In an effort to address this issue, several handlers have already begun packing to meet a U.S. No. 2 for all their production area shipments. Still, absent a minimum grade requirement, avocados that would not meet a U.S. No. 2 are still making it to production area fresh market channels.

The Committee believes these poor quality avocados have depressed prices for better quality avocados and resulted in lower overall returns to producers. Poor quality fruit normally returns the lowest price when compared to quality fruit. Because there is no minimum grade requirement for nonstandard containers, buyers are often unsure of the level of quality they are purchasing. This tends to drive the price offered towards the lowest level for all avocados. Further, when a consumer purchases a poor piece of fruit, it can affect repurchases, reducing demand. Reduced demand also has a negative effect on price.

The Committee believes eliminating lower grade avocados from the marketplace would address consumer demand, and would help ensure the industry is providing all their customers with a quality product. This would encourage repeat purchases, which would help increase returns to producers and handlers. The Committee agreed this change would strengthen market conditions for shipments within the production area. Therefore, the Committee recommended establishing a minimum grade of a U.S. No. 2 for all avocados sold to markets within the production area.

This rule would also make changes to the container marking requirements established under the order. Currently, the only container marking requirement for nonstandard containers is that the containers be marked with a Federal State Inspection Service (FSIS) lot stamp number, which is applied to an adhesive tape seal affixed to the container. While the lot stamp indicates the date the product was inspected, it does not provide any information that would identify the handler. Some handlers pay to have the adhesive tape seal preprinted with their registered handler number, and this number can be used to identify the handler. However, this is not the case for all handlers.

The Committee is concerned that the use of containers with no identifying markings poses problems with the positive identification and traceability of avocados. Such containers are almost impossible to trace back to the original handler. In cases such as marketing order compliance, it is important to be able to identify the source of avocados which are found to be in violation of order requirements. Committee members agreed that the ability to positively identify product and trace its origin is a necessity in today's marketplace. Proper handler identification on a container is an important part of this traceability.

In discussing this issue, the Committee agreed that an adhesive tape seal that is pre-printed with the registered handler number is sufficient to indicate the identity of the handler and to provide trace back. In cases where the tape seal is not printed with a registered handler number, the Committee concurred that the name and address of the handler should appear on the container. The Committee believes requiring all containers handled within the production area to be marked with a registered handler number or the name and address of the handler would improve the identification and traceability of Florida avocados.

The Committee also recommended that all nonstandard containers be marked with the grade packed. Currently, only standard containers are required to be marked with the grade and only from the first Monday after July 15 until the first Monday after January 1. In its discussion of this change, the Committee agreed that for nonstandard containers the grade should be marked in letters at least 3 inches in height, rather than match the 1-inch requirement for standard containers. Nonstandard containers tend to be oversized, and as such, Committee members believe the grade markings need to be in larger letters, which would be more in scale with the larger containers. Also, in the production area, avocados are often displayed in the container in which they were packed. Having recommended that all avocados packed be required to meet a U.S. No. 2 to address the concerns of their customers, Committee members thought it was important that the grade be clearly displayed on the container.

Further, the Committee also agreed it was important to have the grade marked on all containers throughout the season. Therefore, the Committee recommended that the language in the rules and regulations stating that the grade only needs to appear on standard containers from the first Monday after July 15 until the first Monday after January 1 be removed, and that the grade packed be required to appear on all standard and

nonstandard containers for the entire shipping season.

This rule would also make two changes to the container requirements specified under § 915.305. Currently, there are no specific container requirements for weight and dimension for nonstandard containers, except that handlers are prohibited from using 20 bushel plastic field bins to ship avocados to markets inside the production area. As such, many different containers have been used for shipments within the production area. However, the vast majority of nonstandard containers used in the production area are new one bushel containers or used one bushel containers that were previously packed with bananas.

The use of used banana boxes for shipping avocados within the production area increased dramatically following Hurricane Andrew, when containers were in short supply. Now, with many of the avocados sold in the production area displayed in the container in which they were packed, the Committee is concerned that the practice of packing in used containers has had a negative effect on the sale of production area avocados. These containers often have marks and stains from their previous use, and can be in poor condition. The Committee is concerned that the condition of the boxes is affecting the perception of the avocados packed inside.

With production area shipments accounting for 23 percent of total shipments, the Committee believes it is important to provide production area markets with a quality pack. The Committee believes requiring avocados to be packed in new containers would be more sanitary, would improve the appearance of the overall pack, and could increase sales. Consequently, the Committee recommended that all containers used to pack avocados be required to be new.

The other container change the Committee recommended was that all nonstandard containers be required to be one bushel containers. Most nonstandard containers in use are used banana boxes or new containers with dimensions similar to banana boxes. These containers hold approximately one bushel of avocados, which the industry has found to be a useful size for shipments within the production area. Rather than permitting the use of any size container within the production area, the Committee believes requiring the use of a one bushel container would provide some additional uniformity to the pack.

With many handlers already utilizing the one bushel container for production area shipments, this sized container is readily available throughout the production area. Also, because all containers to be used would be required to be new, and handlers would be purchasing containers, the Committee believes this is a good time to establish requirements for nonstandard containers. Requiring all nonstandard containers to be one bushel would provide for a uniform pack that is attractive to the consumer. Therefore, the Committee recommended that one bushel containers be used for all shipments within the production area.

These changes to the grade and container requirements would improve the overall quality and pack, which would meet the demands of production area customers. Responding to market preferences is expected to benefit producers and handlers of Florida avocados. Further, requiring container marking requirements would improve the identification and traceability of production area avocados. Consequently, the Committee recommended the above changes to the rules and regulations under the order.

This rule would also make a minor correction to § 915.306 (a)(1). This change would remove language which only pertains to the period November 2, 1992, through March 31, 1993. This language is obsolete, and as such is no longer necessary.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule would not change the minimum grade of a U.S. No. 2 established for avocados shipped outside the production area or the maturity requirements established under the order. This rule would just require all avocados shipped within the production area to meet the same minimum grade of a U.S. No. 2, and would change the container requirements under the domestic handling regulation. Consequently, no corresponding changes to the import regulations would be required.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 35 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

According to Committee data, the average price for Florida avocados during the 2007–08 season was around $12.00 per 55-pound bushel container, and total shipments were near 1.1 million 55-pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than $750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This proposal would revise the grade and container requirements currently prescribed under the order. This rule would establish a minimum grade of a U.S. No. 2 for shipments within the production area, requiring these shipments to meet the same grade as currently prescribed for shipments leaving the production area. It would also require that all nonstandard containers used for shipments within the production area one bushel in size and that these containers be marked with the registered handler number or the name and address of the handler. This rule would also require that all avocados sold be packed in new containers and that the containers be marked with the grade packed. These changes would provide a grade and pack to meet consumer demand, which would increase producer returns. This rule would also improve the identification and traceability of production area avocados. This rule would revise §§ 915.305 and 915.306, which specify the requisite grade and container requirements. Authority for

these actions is provided in §§ 915.51 and 915.52 of the order. These changes were unanimously recommended by the Committee during a number of meetings over the past several months.

This rule could result in some additional costs. These potential costs would stem primarily from the application of the minimum grade to nonstandard containers, the new container marking requirements, and the requirement that all containers packed be new containers.

The grade requirement for nonstandard containers could result in the loss of some sales, as handlers would no longer be able to sell fruit not meeting a U.S. No. 2 inside the production area. However, these losses are expected to be minimal. Several handlers have already started packing their nonstandard containers to meet a U.S. No. 2 in response to consumer demand. Further, the volume of fruit failing to meet a U.S. No. 2 represents only a small percentage of production area shipments. The Committee estimates lower grade avocados account for only around 6 percent of production area shipments. Last year, the industry shipped nearly 264,000 55-pound containers to production area markets. Using these numbers, lower grade avocados accounted for only 15,840 of the containers shipped to the production area last year, or 1 percent of total industry shipments. Consequently, this rule is not expected to appreciably impact the total number of shipments.

Further, the grade change is not expected to result in perceptibly higher inspection costs. Currently, all avocados shipped in the production area must meet maturity requirements regardless of the container in which they are packed. Consequently, all avocados are already inspected, so any increase in inspection costs would be minimal.

The costs associated with the recommended changes in marking requirements are also expected to be nominal. Larger operations use automated stamping, and already print necessary information on standard containers. A small reconfiguration would allow them to meet this requirement. Some operations order their containers preprinted with the needed information. As this rule would require the use of new containers, handlers would be purchasing containers. The added cost of the additional marking requirements for preprinted containers should be minor. Smaller operations stamp the containers by hand. These operations would be able to meet the new requirements with a one-time purchase of a grade stamp and a name and address stamp.

This rule could also result in a slight increase in cost for handlers that were using used containers. However, Committee members stated that plain, one bushel containers are readily available on the market at reasonable prices. Also, dealers collect and sell the used containers, so used containers are not cost free. Further, the available quantities of used containers are not sufficient to handle all production area shipments, so many new nonstandard containers are already being purchased. Consequently, the cost associated with this change should also be minimal.

While this rule could result in some additional costs, the proposed changes are expected to have a positive effect in the marketplace. The production area is an important market for the industry, accounting for nearly 23 percent of shipments for the last five seasons. The availability of poor quality avocados has had a price depressing effect on the market. Without change, there could be a continued erosion of market confidence and producer returns.

Requiring nonstandard containers to meet the minimum grade of a U.S. No. 2 would address consumer demand and help protect the production area market from the price depressing effects of poor quality avocados. In addition, requiring all production area avocados to be packed in new containers clearly marked with the grade packed would also improve the overall avocado pack sold in the production area. These new requirements would allow handlers to respond to market preferences which is expected to benefit producers and handlers of Florida avocados. Consumers would also benefit as a result of the higher quality pack available in the marketplace. This rule would also provide improved traceability and identification of Florida avocados. Consequently, the benefits of this rule would outweigh the potential costs associated with these changes. The costs and benefits of this rule are not expected to be disproportionately different for small or large entities.

The Committee discussed alternatives to these proposed changes. One alternative considered was to not make any changes to the rules and regulations. However, the Committee agreed making these changes would make the industry more responsive to consumer demand. It would also provide for better identification and traceability of production area avocados. Therefore, this alternative was rejected. The Committee also considered the alternative of requiring the grade to be stamped on nonstandard containers in letters and numbers at least 1 inch in height as is required for standard containers. However, with nonstandard containers being larger in size and with production area avocados sold in the container, the Committee determined that the grade should be clearly visible, and that 1 inch was not large enough. Therefore, this alternative was also rejected.

This proposed rule would revise the grade and container requirements currently prescribed under the avocado marketing order. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. In addition, the Committee's meetings were widely publicized throughout the avocado industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the August 8, 2007, September 9, 2007, January 9, 2008, and February 13, 2008, meetings were public meetings and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers began shipping avocados from the 2008–09 crop starting in June.

The Committee unanimously recommended these changes at various public meetings and interested parties had an opportunity to provide input. Also, Florida avocado producers and handlers are aware of these changes. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Two new paragraphs (d) and (e) are added to § 915.305 to read as follows:

§ 915.305 Florida Avocado Container Regulation 5.

* * * * *

(d) Avocados handled for the fresh market in containers other than those authorized under § 915.305(a) and shipped to destinations within the production area must be packed in 1-bushel containers.

(e) All containers in which the avocados are packed must be new, and clean in appearance, without marks, stains, or other evidence of previous use.

2. In § 915.306, paragraphs (a)(1), (a)(6) and (a)(7) are revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) * * *

(1) Such avocados grade at least U.S. No. 2, except that avocados handled to destinations within the production area may be placed in containers with avocados of dissimilar varietal characteristics.

* * * * *

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked once with the grade of fruit in letters and numbers at least 1 inch in height on the top or one side of the container, not to include the bottom.

(7) Such avocados when handled in containers other than those authorized under § 915.305(a) for shipment to destinations within the production area are marked once with the grade of fruit in letters and numbers at least 3 inches in height on the top or one side of the container, not to include the bottom. Each such container is also to be marked at least once with either the registered handler number assigned to the handler at the time of certification as a registered handler or with the name and address of the handler.

* * * * *

Dated: September 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–22147 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–83; NRC–2007–0012]

David Lochbaum on Behalf of the Project on Government Oversight and the Union of Concerned Scientists

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. David Lochbaum on behalf of the Project on Government Oversight (POGO) and the Union of Concerned Scientists (UCS) on February 23, 2007. The petitioner requested that the NRC amend its regulations governing domestic licensing of production and utilization facilities to require periodic demonstrations by applicable local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those posed by the design basis threat (DBT).

DATES: The docket for the petition for rulemaking PRM–50–83 is closed on September 23, 2008.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be accessible at the Federal e-rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: NRC–2007–0012. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

NRC's Public Document Room (PDR): The public may examine, and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–387–4209 or 301–415–4737, or by e-mail to *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555–0001, telephone 301–415–3092, e-mail *Harry.Tovmassian@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On February 23, 2007, the NRC received a petition for rulemaking from Mr. David Lochbaum on behalf of POGO and UCS (PRM–50–83). The petitioner requested that the NRC amend its regulations in Title 10 of the *Code of Federal Regulations,* Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50), to add an appendix (or comparable regulation), similar to existing Appendix E to 10 CFR Part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' which would require periodic demonstrations by local, State, and Federal entities to ensure that nuclear power plants can be adequately protected against radiological sabotage by adversaries with capabilities that exceed those in the DBT. In the **Federal Register** of March 29, 2007 (72 FR 14713), the NRC published a notice of receipt of the petition for rulemaking and requested public comment.

In support of the request for this proposed amendment to the NRC's regulations, the petitioner cites the recent DBT final rule (72 FR 12705; March 19, 2007) which states that the DBT rule reflects the Commission's determination of the most likely composite set of adversary features against which a private security force should reasonably be required to defend. The petitioner states that the final DBT rule requires plant owners to demonstrate periodically that they can meet their responsibilities to adequately protect nuclear power plants from sabotage threats up to and including the

DBT but fails to include provisions requiring periodic demonstrations that applicable local, State, and Federal entities can meet their responsibilities to adequately protect nuclear power plants from sabotage threats by adversaries with capabilities exceeding those of the DBT. The petitioner urges the NRC to remedy this shortcoming by amending its regulations to require demonstrations similar to those required by Appendix E to 10 CFR Part 50, which the petitioner claims requires plant owners and external authorities to demonstrate periodically their ability to meet their responsibilities during nuclear plant emergencies. According to the petitioner, Appendix E to 10 CFR Part 50 requires biennial exercises at each nuclear plant site and evaluation by the Federal Emergency Management Agency (FEMA) of the performance of local, State, and Federal entities.

Public Comments

The notice of receipt of the petition for rulemaking invited interested persons to submit their comments. The NRC received 16 comment letters (1 from the Nuclear Energy Institute (NEI) on behalf of the nuclear energy industry, 13 from NRC-licensed power reactor operators or their affiliates, and 2 from private citizens). In its letter, NEI recommends that the NRC deny the petition. According to NEI, the U.S. Department of Homeland Security (DHS), through the Homeland Security Presidential Directive-7, ''Critical Infrastructure Identification, Prioritization, and Protection,'' is responsible for the oversight and coordination of local, State, and Federal entities for all terrorist threats including those above the DBT. In addition, the commenter states that the NRC has acknowledged in the Statement of Considerations for the recent DBT final rule that the NRC and DHS are working together to develop and improve emergency preparedness for a terrorist attack through Federal initiatives such as comprehensive review programs and integrated response planning efforts. For these reasons, NEI recommends that the NRC deny this petition. All 13 comment letters from the nuclear power reactor industry endorse the NEI comments.

The Commission agrees that oversight and coordination of local, State, and Federal entities are under the purview of DHS and that the NRC and DHS continue to undertake joint comprehensive review programs and integrated response planning efforts. One individual commenter, opposing the petition, also questions the NRC's authority to require participation in demonstrations by local, State, and Federal entities. This commenter's argument is essentially the same as that of NEI. This commenter also states that the proposed requirement is too vague in that it does not define how far beyond the DBT adequate protection should be demonstrated. With respect to the specificity of the petition, the NRC concurs that it would be difficult to construct criteria defining levels beyond the DBT for which demonstrations would be required. However, the question is moot because the NRC lacks the authority to require the demonstrations in the first place. Another individual commenter presents a discussion that generally does not address the elements of the petition. This commenter states that demonstrations of the capability of Federal authorities to ''take-back-the-plant'' might be needed but adds that the adversary has easier and more effective means of achieving radiological sabotage than physical takeover of a plant. The Commission believes that this argument has no bearing on the merits of the petition.

Reason for Denial

In December 1979, the President directed FEMA to assume lead federal responsibility for all offsite nuclear emergency planning and response. Homeland Security Presidential Directive-7, ''Critical Infrastructure Identification, Prioritization and Protection,'' assigns the lead role for coordinating offsite security responses to DHS. The NRC's cooperation in these planning and response activities is a factor in the NRC's determination that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, whether or not the event is the result of sabotage.

In addition, the petitioner has misinterpreted Appendix E to 10 CFR Part 50. The petitioner states that ''Appendix E to 10 CFR part 50 currently requires periodic demonstrations that plant owners and external authorities can successfully meet their responsibilities during nuclear plant emergencies. * * *'' While licensees must make a good faith effort to secure the participation in emergency preparedness demonstrations of offsite authorities having a role in the emergency preparedness plan, Section IV.F.2.h of Appendix E and 10 CFR 50.47(c) recognize that such entities are at liberty to refuse to participate. This recognition is based on the fact that the NRC does not have the authority to require offsite authorities to participate in a nuclear power reactor licensee's exercises. Thus, the petitioner's reliance on Appendix E to 10 CFR Part 50 to support the request that the NRC require local, State, and Federal governments to participate in demonstrations of their capability to respond to beyond-DBT events is misplaced because the NRC cannot compel local, State, or Federal entities to take part in biennial emergency exercises if those entities do not choose to participate in emergency planning activities.

For these reasons, the Commission finds that promulgating the petitioner's proposed requirements would exceed the NRC's authority and is denying PRM–50–83.

Commissioner Gregory B. Jaczko's Dissenting View on the Commission's Decision To Deny the Petition for Rulemaking Concerning Integrated Response

I respectfully disagree with the decision to deny the petition for rulemaking as included in this **Federal Register** notice. The petitioners are asking for a more formal approach to ensuring licensees, local, State, and federal officials are closely coordinated to respond to a range of potential security events. The requested approach is modeled on the emergency preparedness exercises which currently take place, and I believe this proposal warrants further consideration.

While it is certainly true that the NRC does not have the authority to require offsite federal agencies to participate in nuclear power reactor exercises, it is also true that our emergency preparedness regulations clearly read as if we do—for example: ''Offsite plans for each site *shall be exercised* biennially *with full participation by each offsite authority having a role* under the radiological response plan'' (10 CFR Part 50 Appendix E Section IV.F.2.c., emphasis added), and ''*A full participation exercise* which tests as much of the licensee, State, and local emergency plans as is reasonably achievable without mandatory public participation *shall be conducted* * * *'' (10 CFR Part 50 Appendix E Section IV.F.2.a., emphasis added). As footnote 4 of that section makes clear, these exercises are for the purpose of ''testing major observable portions of the onsite and offsite emergency plans and *mobilization of State, local and licensee personnel* and other resources in sufficient numbers to verify the capability to respond to the accident scenario.'' (Id., emphasis added)

10 CFR 50.47(c) does include provisions for determining that reasonable assurance exists even if States and local officials refuse to

participate in exercises. Thus it is implicit that we can not require their participation, but at the least we can certainly fully encourage it. Clearly, the regulations could be modified to require licensees to participate in Federal and State integrated response exercises that Federal, State and local agencies decide to pursue. They could also be drafted in such a way as to encourage interagency participation in these types of exercises, if a policy decision was reached concluding that was a good approach.

The NRC is currently participating in integrated response initiatives with the Homeland Security Department and the Federal Bureau of Investigation to strengthen the ability of emergency response organizations and law enforcement around nuclear power plants to respond to events including potential beyond-DBT threats. The challenge to further pursuing integrated response exercises is not in securing the participation of government agencies which are eager to make additional progress, but rather with the willingness of the NRC's licensees to volunteer support for those efforts. That is a challenge that can be addressed by exercising the agency's authorities to compel such participation on the part of licensees. The NRC should pursue such a requirement if a substantive analysis by agency staff and the results of a public rulemaking determine it would provide additional protection to the common defense and security.

Rather than searching for a legalistic reason to dismiss the petition, the agency would be much better served by analyzing the substance of the proposal and basing its decision on the petition for rulemaking on the merits. It is especially awkward to hang our hats on a lack of authority to pursue the petition when the legal basis for our authority over integrated response so closely parallels our authority in the emergency preparedness arena. Such an approach risks creating challenges to the important radiological emergency preparedness program we now have in place.

The Majority View of the Commission Regarding the Denial of a Petition for Rulemaking Submitted by David Lochbaum on Behalf of Project on Government Oversight and the Union of Concerned Scientists (PRM–50–83)

The Commission majority does not share Commissioner Jaczko's dissenting view on the denial of PRM–50–83. The petitioner requested that the NRC add an appendix (or comparable regulation) similar to Appendix E of 10 CFR Part 50 which, the petitioner asserts, requires offsite entities having a role under the radiological response plan, to participate in biennial exercises designed to verify the capability of these entities to respond to the accident scenario. The petitioner has misconstrued Appendix E which, in fact, recognizes the NRC's lack of authority to require offsite entities to participate in biennial exercises. While Appendix E states in part that it requires nuclear power plant licensees to involve offsite authorities having a role in the emergency preparedness plan in biennial emergency preparedness demonstrations, it further states that ''[t]he participation of State and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities. * * *'' (10 CFR Part 50, Appendix E Section IV.F.2.h.).

The Commission majority points out that the NRC does not have the statutory authority to require the participation of offsite authorities and that the NRC cannot confer such authority upon itself through rulemaking. We have reviewed the substance of the petition and are satisfied that adequate protection is, indeed, provided by the current integrated response framework. Therefore, we find no basis for granting PRM–50–83 or for initiating a rulemaking that would purport to require offsite authorities to participate in nuclear power plant licensees' exercises or to ''encourage'' such participation.

The lead role for coordinating offsite security responses was assigned to the Department of Homeland Security (DHS) (Homeland Security Presidential Directive-7, ''Critical Infrastructure Identification, Prioritization, and Protection''). To that end, the NRC has worked with DHS and other agencies to improve the capabilities of first responders as part of the National Infrastructure Protection Plan. Part of this effort included the conduct of Comprehensive Reviews (CRs) at all commercial nuclear power plants which has resulted in the identification of numerous readily-adaptable protective measures for increased first responder readiness and preparedness in the event of a terrorist attack or natural disaster. The NRC also assisted DHS in the Buffer Zone Protection Program designed to support state, local and tribal law enforcement and other first responders to enhance the security of a range of ''Critical Infrastructures and Key Resources,'' which include nuclear power plants. In addition, the NRC has helped to advance offsite response capabilities by meeting with a range of federal stakeholders to ascertain their support and concurrence on a path forward for integrated response planning. The NRC continues to maintain regulatory attention on the effectiveness of emergency preparedness as extended to security-related scenarios. The NRC has been working with the Federal Emergency Management Agency as part of the ongoing Emergency Preparedness (EP) rulemaking to incorporate hostile action-initiated scenarios into periodic biennial exercises under Appendix E. These exercises are intended to test the ability of licensee personnel to coordinate with state and local responders under the National Incident Management System/Incident Command Structure to take appropriate actions to mitigate the impact of a terrorist attack on a commercial nuclear power plant. The NRC staff is also working with the power reactor industry, as part of a voluntary initiative response to NRC Bulletin 2005–02, where each reactor site is conducting a hostile action-based drill within a 3-year period. The NRC staff will be incorporating the lessons learned from these drills into its proposed EP rulemaking.

As stated in our votes on this matter, we do not question the important role that offsite federal, state and local authorities play in a nuclear power plant's ability to successfully respond to attempted radiological sabotage greater than the design basis threat. The Commission majority believes that the current framework provides reasonable assurance that adequate protective measures can and will be taken in the event of radiological sabotage.

Dated at Rockville, Maryland, this 17th day of September 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–22174 Filed 9–22–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0150; Directorate Identifier 2007–NM–325–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –400ER 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 NPRM for an airworthiness directive (AD) that applies to certain Boeing Model 767 series airplanes. The original NPRM would have superseded an existing AD that currently requires a one-time inspection for missing, damaged, or incorrectly installed parts in the separation link assembly on the deployment bar of the emergency escape system on the entry or service door, and installation of new parts if necessary. The original NPRM proposed to require replacing the separation link assembly on the applicable entry and service doors with an improved separation link assembly, and related investigative and corrective actions if necessary. The original NPRM also removed certain airplanes from the applicability. The original NPRM resulted from reports that entry and service doors did not open fully during deployment of emergency escape slides, and additional reports of missing snap rings. This action revises the original NPRM by adding a new inspection for discrepancies of the unloaded spring dimensions in the separation link assembly, and corrective actions if necessary. We are proposing this supplemental NPRM to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers.

DATES: We must receive comments on this supplemental NPRM by October 20, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0150; Directorate Identifier 2007–NM–325–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') to supersede AD 2001–26–19, amendment 39–12585 (67 FR 265, January 3, 2002). The original NPRM applied to certain Boeing Model 767 series airplanes. The original NPRM was published in the **Federal Register** on February 11, 2008 (73 FR 7690). The original NPRM proposed to require replacing the separation link assembly on the applicable entry and service doors with an improved separation link assembly, and related investigative and corrective actions if necessary.

Actions Since Issuance of Original NPRM

Since we issued the original NPRM, Boeing has issued Boeing Special Attention Service Bulletin 767–25–0428, Revision 1, dated May 8, 2008 (we referred to the original service bulletin as the appropriate source of information for accomplishing the actions). Revision 1 of the service bulletin adds procedures for inspecting unloaded spring dimensions in the separation link assembly for discrepancies (any nicks or scrapes and subsequent breakage or other permanent deformation such as bent tangs; out of tolerance cap screw) using the procedures specified in the component maintenance manual, and replacing any discrepant spring with a new spring. The service bulletin also adds new torque values for the cap screw. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Comments

We have considered the following comments on the original NPRM.

Request for Changes to the Preamble of the Original NPRM

Boeing provided the following comments to the original NPRM:

- Boeing asks that the sentence ''This proposed AD would also remove certain airplanes from the applicability,'' be removed from the **SUMMARY** section of the original NPRM. Boeing states that it is unclear where or how certain airplanes have been removed from the applicability since the initial release of the service bulletin.
- Boeing asks that the sentence ''We have also removed Model 767–300F airplanes * * *'' be removed from the ''Actions Since Existing AD Was Issued'' section of the original NPRM. Boeing states that the separation links are not part of the Model 767 Freighter; therefore, freighters are not listed in the referenced service bulletin. Boeing adds that they should not be listed in the AD

in the first place and should be removed.

• Boeing asks that the word ''existing'' be removed from the sentence ''Therefore, we have determined that the existing separation link assembly must be secured with a nut and washer * * *'' That sentence is also in the ''Actions Since Existing AD Was Issued'' section of the original NPRM. Boeing states that the nut and washer must be used with a new separation link assembly.

• Boeing asks that the second through the fifth sentences of the ''Relevant Service Information'' section be removed. Boeing states that the objective of the requested action in the service bulletin is to bring the condition of the deployment bar assembly as near to the ''just manufactured'' condition as possible. Boeing notes that the requested action is a reminder to perform normal, standard maintenance practices and is not related to the root cause of the missing snap rings.

We partially agree with the Boeing comments.

We do not agree to change the **SUMMARY** section to remove the language which specified the subject airplanes were removed. That language was specified in the NPRM because Model 767–300F airplanes were included in the applicability of AD 2001–26–19, but would not be included in the applicability of this supplemental NPRM.

We acknowledge and agree that Boeing's suggested changes to the other sections would further clarify the information specified in the original NRPM. However, the other sections of the original NRPM do not reappear in the supplemental NPRM.

We have made no change to the supplemental NPRM in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed under ''Actions Since Issuance of Original NPRM'' expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

There are about 1,225 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 355 airplanes of U.S. registry. The new proposed actions would take up to about 6 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost up to about $10,671 per airplane. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $3,958,605, or $11,151 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12585 (67 FR 265, January 3, 2002) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0150; Directorate Identifier 2007–NM–325–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 20, 2008.

Affected ADs

(b) This AD supersedes AD 2001–26–19.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –400ER series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 767–25–0428, dated August 23, 2007.

Unsafe Condition

(d) This AD results from reports that entry and service doors did not open fully during deployment of emergency escape slides, and additional reports of missing snap rings. We are issuing this AD to prevent failure of an entry or service door to open fully in the event of an emergency evacuation, which could impede exit from the airplane. This condition could result in injury to passengers or crewmembers.

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.

Replacement

(f) Within 48 months after the effective date of this AD, replace the separation link assembly on the deployment bar of the emergency escape system on all the applicable entry and service doors with an improved separation link assembly, and do all the applicable related investigative and corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0428, dated August 23, 2007, or Revision 1, dated May 8, 2008. After the effective date of this AD only Revision 1 of the service bulletin may be used.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in

accordance with the procedures found in 14 CFR 39.19.

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

Issued in Renton, Washington, on September 11, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22220 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1007; Directorate Identifier 2008–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) Airplanes and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards. The assessment showed that due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1007; Directorate Identifier 2008–NM–135–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–25, dated July 3, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action was required.
>
> The assessment showed that due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.
>
> To correct the unsafe condition, this directive mandates the installation of conduit and the addition of spacers to protect fuel tank wiring.

You may obtain further information by examining the MCAI in the AD docket.

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

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It

requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

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

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

Relevant Service Information

Bombardier has issued Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 159 products of U.S. registry. We also estimate that it would take about 38 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,914 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $946,686, or $5,954 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2008–1007; Directorate Identifier 2008–NM–135–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10003 through 10169 inclusive.

(2) Bombardier Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15030 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical Power.

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL–600–2D24 aircraft fuel system against new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment

(NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action was required.

The assessment showed that due to the close proximity of intrinsically safe fuel system wiring with other wiring, a single failure from wire chafing at various locations of the fuselage could result in an ignition source inside the fuel tank. In addition, chafing of the temperature sensor wiring against the high power wiring in the avionics compartment could lead to overheating of the temperature sensor and hot surface ignition. The presence of an ignition source inside the fuel tank could result in a fuel tank explosion.

To correct the unsafe condition, this directive mandates the installation of conduit and the addition of spacers to protect fuel tank wiring.

Actions and Compliance

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

(1) Within 4,500 flight hours after the effective date of this AD, modify the fuel system wiring along the fuselage and in the avionics compartment by installing protective conduit and spacers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005.

(2) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–24–011, dated September 7, 2004; Revision A, dated December 14, 2004; or Revision B, dated February 28, 2005; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Rocco Viselli, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–25, dated July 3, 2008, and Bombardier Service Bulletin 670BA–24–011, Revision C, dated November 28, 2005, for related information.

Issued in Renton, Washington, on September 12, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22218 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0981; Directorate Identifier 2008–NM–073–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747 airplanes. The existing AD currently requires repetitive inspections of the body station (BS) 2598 bulkhead, and corrective actions if necessary. The existing AD also currently requires a terminating modification for the repetitive inspections and a post-modification inspection of the modified area. This proposed AD would continue requiring those actions with revised service information. For certain airplanes, this proposed AD would require new repetitive inspections, an interim modification, and post-interim modification inspections. For certain airplanes, this proposed AD also would require replacing any previously repaired aft inner chord and reinstalling the terminating modification. This proposed AD results from reports of cracked aft inner chords on airplanes after certain requirements of the existing AD were done. We are proposing this AD to prevent fatigue cracking of the BS 2598 bulkhead structure, which could result in inability of the structure to carry horizontal stabilizer flight loads, and loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2008.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0981; Directorate Identifier 2008–NM–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

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

Discussion

On February 22, 2006, we issued AD 2006–05–06, amendment 39–14503 (71 FR 12125, March 9, 2006), for certain Boeing Model 747 airplanes. That AD requires repetitive inspections of the body station (BS) 2598 bulkhead, and corrective action if necessary. That AD also requires modification of the bulkhead, including a one-time inspection and corrective action if necessary, which terminates certain repetitive inspections. In addition, that AD also requires a post-modification inspection of the modified area. That AD resulted from reports of fatigue cracking on BS 2598 bulkhead. We issued that AD to prevent fatigue cracking of the BS 2598 bulkhead structure, which could result in inability of the structure to carry horizontal stabilizer flight loads, and loss of controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2006–05–06, we have received a report of a cracked aft inner chord that was completely severed and a 0.5-inch crack in the adjacent frame support on an in-service airplane. These cracks have been attributed to fatigue. The airplane had accumulated 9,988 total flight cycles and 68,081 total flight hours. A surface high frequency eddy current (HFEC) inspection had been done on the aft inner chord as required by AD 2006–05–06. In addition, we have received reports of cracked aft inner chords that had been previously repaired and not replaced before the bulkhead was modified in accordance with AD 2006–05–06. Repaired chords can have an active crack tip that may continue to propagate, even if the area has been reinforced.

Therefore, we have determined that in addition to the repetitive surface HFEC inspections required by AD 2006–05–06, repetitive open hole surface HFEC inspections are necessary to detect cracks that are beneath the surface of the aft inner chords. We also have determined that the terminating modification, if installed with a repaired aft inner chord in place as required by AD 2006–05–06, does not adequately address the identified unsafe condition, and that further rulemaking is necessary.

Relevant Service Information

We have reviewed Revision 4 of Boeing Alert Service Bulletin 747–53A2427, dated March 6, 2008 (AD 2006–05–06 refers to Boeing Alert Service Bulletin 747–53A2427, Revision 2, dated October 5, 2000; or Revision 3, dated September 27, 2001; as appropriate sources of service information for accomplishing certain requirements). The repetitive surface HFEC inspections described in Revision 4 are identical to those in earlier revisions of the service bulletin. Revision 4 adds new repetitive open hole HFEC inspections to detect cracks in the bulkhead splice fitting, frame support fitting, and forward and aft inner chords on the left and right side of the BS 2598 bulkhead, and repair if necessary. Revision 4 also adds a new interim modification for the aft inner chords, which defers the repetitive surface and open hole HFEC inspections. The compliance time for accomplishing the initial open hole inspection is before 6,000 or 16,000 total flight cycles (depending on the airplane configuration), or within 1,500 flight cycles after the date on Revision 4 of the service bulletin, whichever occurs later. The compliance time for accomplishing repetitive surface and open hole HFEC inspections is within 1,500 flight cycles after the last surface HFEC inspection of the forward side of the bulkhead or within 6,000 flight cycles after installation of the structural repair manual repair or interim modification, depending on the airplane configuration.

We also have reviewed Revision 1 of Boeing Service Bulletin 747–53–2473, dated February 20, 2007 (AD 2006–05–06 refers to Boeing Service Bulletin 747–53–2473, dated March 24, 2005; as an appropriate source of service information for accomplishing the terminating modification). Revision 1 removes the option to re-install an aft inner chord that has been repaired before accomplishing the terminating modification. The modification and related investigative and corrective actions are essentially identical to those specified in Boeing Service Bulletin 747–53–2473, dated March 24, 2005.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–05–06 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service information described previously specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

For certain airplanes, Boeing Service Bulletin 747–53–2473, Revision 1, does not specify a compliance time for replacing the previously repaired aft inner chord and reinstalling the terminating modification. In developing an appropriate compliance time for these proposed actions, we considered the degree of urgency associated with the subject unsafe condition, the manufacturer's recommendation for an appropriate compliance time, and the average utilization of the affected fleet. In light of these factors, we find that a compliance time of within 3,000 flight cycles after doing the modification required by paragraph (l) of this AD, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Explanation of Change Made to Requirements of AD 2006–05–06 Retained in This AD

We have simplified paragraphs (g), (i), and (k) of this AD by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

Costs of Compliance

There are about 998 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
Surface HFEC inspections and open hole HFEC inspections.	2	$80	None	$160, per inspection cycle	162	$25,920, per inspection cycle.
Detailed inspections	2	80	None	$160, per inspection cycle	162	$25,920, per inspection cycle.
Interim modification	4	80	$4,000	$4,320	162	$699,840.
Replacement of Previously Repaired Aft Inner Chords.	2	80	None	$160	162	$25,920.
Terminating modification	126	80	$33,716	$43,796	162	$7,094,952.
Post-terminating modification inspection.	4	80	None	$320	162	$51,840.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14503 (71 FR 12125, March 9, 2006) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0981; Directorate Identifier 2008–NM–073–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2008.

Affected ADs

(b) This AD supersedes AD 2006–05–06.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, line numbers 1 through 1307 inclusive.

Unsafe Condition

(d) This AD results from reports of cracked aft inner chords on airplanes after certain requirements of the existing AD were done. We are issuing this AD to prevent fatigue cracking of the body station (BS) 2598 bulkhead structure, which could result in inability of the structure to carry horizontal stabilizer flight loads, and loss of controllability of the airplane.

Compliance

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

Requirements of AD 2006–05–06

Repetitive High Frequency Eddy Current (HFEC) Inspections of the Bulkhead Frame Supports

(f) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after August 16, 2001 (the effective date of AD 2001–14–07), whichever occurs later: Do an open-hole HFEC inspection to find cracking of the bulkhead frame support under the hinge support fittings of the horizontal stabilizer on the left and right sides at BS 2598, in accordance with Figure 2 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2449, Revision 1, dated May 24, 2001; or Revision 2, dated March 14, 2002. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles. Inspections accomplished before August 16, 2001, per Boeing Alert Service Bulletin 747–53A2449, dated June 8, 2000, are considered acceptable for compliance with the applicable inspection specified in this paragraph.

Repair of Any Cracked Bulkhead Frame Support

(g) If any cracking is found during any inspection required by paragraph (f) of this AD, before further flight, repair using a method approved in accordance with the

procedures specified in paragraph (w) of this AD.

Repetitive Inspections of Inner Chords, Frame Support, and Splice Fitting

(h) Except as provided by paragraph (n) of this AD: Do a surface HFEC inspection of the forward and aft inner chords, the frame support, and the splice fitting of the forward inner chord of the upper corners of the station 2598 bulkhead to find cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 2, dated October 5, 2000; or Revision 3, dated September 27, 2001; at the latest of the times specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable. Repeat the inspection after that at intervals not to exceed 1,500 flight cycles.

(1) For airplanes having line numbers 1 through 1241 inclusive:

(i) Before the accumulation of 6,000 total flight cycles.

(ii) Within 500 flight cycles after August 28, 2001 (the effective date of AD 2001–15–03).

(iii) For airplanes inspected before August 28, 2001, in accordance with Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998 (including inspections of the splice fitting), or Revision 1, dated October 28, 1999: Within 1,500 flight cycles after accomplishment of the last inspection done in accordance with the original service bulletin or Revision 1, as applicable.

(2) For airplanes having line numbers 1242 through 1307 inclusive:

(i) Before the accumulation of 16,000 total flight cycles.

(ii) Within 500 flight cycles after August 28, 2001.

(iii) For airplanes inspected before August 28, 2001, in accordance with Boeing Alert Service Bulletin 747–53A2427, dated December 17, 1998 (including inspections of the splice fitting), or Revision 1, dated October 28, 1999: Within 1,500 flight cycles after accomplishment of the last inspection done in accordance with the original service bulletin or Revision 1, as applicable.

Repair of Any Cracked Inner Chord, Frame Support, or Splice Fitting

(i) If any cracking is found during the inspections required by paragraph (h) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 2, dated October 5, 2000; or Revision 3, dated September 27, 2001; except as provided by paragraph (n) of this AD, and except where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (w) of this AD.

Repetitive Detailed Inspections of BS 2598 Bulkhead

(j) Before the accumulation of 10,000 total flight cycles, or within 1,000 flight cycles after October 27, 2003 (the effective date of AD 2003–19–08), whichever is later: Do a detailed inspection of the BS 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the areas specified in paragraphs (j)(1) and (j)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2467, dated July 26, 2001; or Revision 1, dated April 28, 2005. Repeat the inspections after that at intervals not to exceed 3,000 flight cycles.

(1) The lower aft inner chords.

(2) The upper aft outer chords, and the diagonal brace attachment fittings, flanges, and rods.

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 mirrors, magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required.''

Repair of Any Cracked BS 2598 Bulkhead

(k) If any discrepancy is found during any inspection required by paragraph (j) of this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2467, dated July 26, 2001; or Revision 1, dated April 28, 2005. If the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (w) of this AD.

Terminating Modification

(l) Except as provided by paragraphs (p) and (q) of this AD: Before the accumulation of 20,000 total flight cycles, or within 48 months after April 13, 2006 (the effective date of AD 2006–05–06), whichever occurs later, modify the bulkhead by doing all applicable actions including surface and open-hole HFEC inspections for cracking of the upper forward inner chords, aft inner chords, upper splice fittings, and frame support fittings, as specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53–2473, dated March 24, 2005. Repair any cracks before further flight in accordance with the service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions: Before further flight, repair the cracks using a method approved in accordance with the procedures specified in paragraph (w) of this AD. Accomplishment of the modification terminates the requirements of paragraph (f), (h), and (j)(1) of this AD.

Post-Modification Inspection and Repair

(m) Within 20,000 flight cycles after the modification required by paragraph (l) of this AD, inspect the BS 2598 bulkhead for cracks, and repair any cracks before further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

New Requirements of This AD

New Revision of Service Bulletin

(n) As of the effective date of this AD, use only the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008, to do the repetitive surface HFEC inspections required by paragraph (h) of this AD and the repair required by paragraph (i) of this AD.

Terminating Repair for Repetitive Surface HFEC Inspections

(o) As of the effective date of this AD, accomplishment of the aft inner chord repair required by paragraph (i) of this AD in accordance with the applicable structural repair manual (SRM) specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008, ends the repetitive surface HFEC inspections required by paragraph (h) of this AD for that side of the bulkhead only.

Replacement of Previously Repaired Aft Inner Chord and Reinstallation of Terminating Modification

(p) For airplanes on which the terminating modification required by paragraph (l) of this AD has been done before the effective date of this AD, and on which any previously repaired aft inner chord was not replaced during that terminating modification: Within 3,000 flight cycles after doing the modification, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, replace any previously repaired aft inner chord with a new aft inner chord and reinstall the terminating modification using a method approved in accordance with the procedures specified in paragraph (w) of this AD. Accomplishment of the replacement and reinstallation of the terminating modification terminates the requirements of paragraphs (l) and (m) of this AD and repetitive inspections required by this AD, except for the inspections specified in paragraph (r) of this AD.

Revised Terminating Modification

(q) For airplanes on which the terminating modification required by paragraph (l) of this AD has not been done as of the effective date of this AD: Before the accumulation of 20,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, modify and do applicable relative investigative and corrective actions by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53–2473, Revision 1, dated February 20, 2007; except where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, before further flight, repair the cracks using a method approved in accordance with the procedures specified in paragraph (w) of this AD. The applicable related investigative and corrective actions must be done before further flight. Accomplishment of the replacement and reinstallation of the terminating modification terminates the requirements of paragraphs (l) and (m) of this AD and repetitive inspections required by

this AD, except for the inspections specified in paragraph (r) of this AD.

Post-Modification Inspection and Repair

(r) Within 20,000 flight cycles after the modification required by paragraph (p) or (q) of this AD, as applicable, inspect the BS 2598 bulkhead for cracks, and repair any crack before further flight, in accordance with a method approved by the Manager, Seattle ACO.

Open Hole HFEC Inspection(s) and Terminating Repair

(s) For airplanes on which the terminating modification required by paragraph (l) or (q) of this AD has not been done: Do an initial open hole HFEC inspection to detect cracks in the bulkhead splice fitting, frame support fitting, and forward and aft inner chords on the left and right sides of the BS 2598 bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008. Do the initial inspection at the applicable time specified in Table 1 or 3 of paragraph 1.E., ''Compliance,'' of the service bulletin; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(1) If no crack is detected, repeat the open hole HFEC inspection thereafter at intervals not to exceed 1,500 flight cycles.

(2) If any crack is detected, before further flight, repair it in accordance with the service bulletin; except, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (w) of this AD. Accomplishment of the aft inner chord repair in accordance with the applicable SRM specified in the Accomplishment Instructions of the service bulletin ends the repetitive open hole HFEC inspections required by paragraphs (h) and (s)(1) of this AD for that side of the bulkhead only.

Interim Modification

(t) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008, on which the terminating modification required by paragraph (l) or (q) of this AD has not been done: Before the accumulation of 12,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, install the interim modification for the aft inner chords, in accordance with the Accomplishment Instructions of the service bulletin. Accomplishment of the interim modification ends the repetitive open hole and surface HFEC inspections required by paragraphs (h) and (s)(1) of this AD.

Post-Interim Modification/Repair Repetitive Surface and Open Hole HFEC Inspections

(u) For airplanes on which the interim modification required by paragraph (t) of this AD has been done or the repair of any cracked aft inner chord has been done in accordance with the SRM specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008, as required by paragraph (i) or (s)(2) of this AD; and on which the terminating modification required by paragraph (l) or (q) of this AD has not been done: At the applicable times specified in Table 1, 2, or 3 of paragraph 1.E., ''Compliance,'' of the service bulletin, do a surface HFEC inspection to detect cracks on the forward side (unmodified area) of the bulkhead and open hole and surface HFEC inspections to detect cracks in the modified or repaired area, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008. Repeat the open hole and surface HFEC inspections thereafter at intervals not to exceed 1,500 flight cycles, until the modification required by paragraph (q) of this AD is done, as applicable; except, for airplanes on which the repair of any cracked aft inner chord has been done on only one side of the bulkhead in accordance with the applicable SRM as required by paragraph (i) or (s)(2) of this AD, the repetitive open hole and surface HFEC inspections required by paragraph (h) and (s)(1) of this AD must continue to be done for the other side of the bulkhead.

Repair of Any Cracked Inner Chord, Splice Fitting, or Frame Support Fitting

(v) If any crack is detected during any open hole or surface HFEC inspection required by paragraph (u) of this AD, before further flight, repair any cracked inner chord, splice fitting, or frame support fitting, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2427, Revision 4, dated March 6, 2008; except, where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (w) of this AD.

Alternative Methods of Compliance (AMOCs)

(w)(1) The Manager, Seattle ACO, FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

(4) AMOCs approved previously in accordance with AD 2006–05–06 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on September 11, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22215 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1006; Directorate Identifier 2008–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. The existing AD currently requires an inspection to determine if acceptable external skin doublers are installed at the stringer 6 (S–6) lap splices, between station (STA) 340 and STA 400. For airplanes without the acceptable external skin doublers, the existing AD requires repetitive related investigative actions and corrective actions if necessary. The existing AD also provides an optional terminating modification for the repetitive related investigative actions. This proposed AD would mandate the optional terminating modification. This proposed AD results from a report of cracked fastener holes at the right S–6 lap splice between STA 340 and STA 380. We are proposing this AD to prevent cracking in the fuselage skin, which could result in rapid decompression and loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2008.

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

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

- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1006; Directorate Identifier 2008–NM–110–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On May 13, 2008, we issued AD 2008–10–15, amendment 39–15522 (73 FR 29042, May 20, 2008), for certain Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That AD requires an inspection to determine if acceptable external skin doublers are installed at the stringer 6 (S–6) lap splices, between station (STA) 340 and STA 400. For airplanes without the acceptable external skin doublers, that AD requires repetitive related investigative actions and corrective actions if necessary. That AD also provides an optional terminating modification for the repetitive related investigative actions. That AD resulted from a report of cracked fastener holes at the right S–6 lap splice between STA 340 and STA 380. We issued that AD to detect and correct cracking in the fuselage skin, which could result in rapid decompression and loss of the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2008–10–15 specifies that we consider the requirements ''interim action'' and that we were considering requiring the modification (installation of acceptable external skin doublers), which would terminate the repetitive related investigative actions. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2008–10–15 and would retain the requirements of the existing AD. This proposed AD would also mandate the terminating action that was optional in AD 2008–10–15.

Costs of Compliance

There are about 501 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 174 airplanes of U.S. registry.

The inspection for acceptable external skin doublers that is required by AD 2008–10–15 and retained in this proposed AD takes about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $27,840, or $160 per airplane.

The cost for the proposed terminating action depends upon the results of the inspections. Therefore, we cannot calculate those costs because we do not know what doubler conditions operators will find.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15522 (73 FR 29042, May 20, 2008) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–1006; Directorate Identifier 2008–NM–110–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2008.

Affected ADs

(b) This AD supersedes AD 2008–10–15.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2748, dated May 9, 2008.

Unsafe Condition

(d) This AD results from a report of cracked fastener holes at the right stringer 6 (S–6) lap splice between station (STA) 340 and STA 380. We are issuing this AD to prevent cracking in the fuselage skin, which could result in rapid decompression and loss of structural integrity of the airplane.

Compliance

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

Requirements of AD 2008–10–15

Service Bulletin Reference Paragraph

(f) The term ''alert service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2748, dated May 9, 2008.

Inspection for Acceptable External Skin Doublers

(g) For airplanes identified as Group 1, Configuration 2, in Boeing Alert Service Bulletin 747–53A2748, dated May 9, 2008: At the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, do an external general visual inspection to determine if acceptable external skin doublers are installed at the left- and right-side S–6 lap splices, in accordance with Part 1 of the alert service bulletin.

(1) Prior to the accumulation of 10,000 total flight cycles.

(2) Within 8,000 flight cycles after a modification was done in accordance with Boeing Service Bulletin 747–53–2253.

(3) Within 15 days or 100 flight cycles after May 20, 2008 (the effective date of AD 2008–10–15), whichever occurs first.

Acceptable External Skin Doublers Found at Both Sides

(h) If, during the inspection required by paragraph (g) of this AD, acceptable external skin doublers in accordance with the alert service bulletin are found installed at both the left- and right-side S–6 lap splices, no further work is required by this AD.

Acceptable External Skin Doublers Not Found—Repetitive Related Investigative Actions and Corrective Actions

(i) If, during the inspection required by paragraph (g) of this AD, acceptable external skin doublers in accordance with alert service bulletin are not found installed at either the left- or right-side S–6 lap splice: Before further flight, do all applicable related investigative and corrective actions by doing all actions specified in Part 2 of the alert service bulletin. Repeat the applicable related investigative actions thereafter at intervals not to exceed 300 flight cycles until the modification specified in paragraph (j) of this AD is done.

New Requirement of This AD

Terminating Modification

(j) If, during the inspection required by paragraph (g) of this AD, acceptable external skin doublers as specified in the alert service bulletin are not found installed at either the left- or right-side S–6 lap splice: Within 3,000 flight cycles after doing the initial related investigative actions in paragraph (i) of this AD, or within 300 flight cycles after the effective date of this AD, whichever occurs later, install acceptable external skin doublers at both the left- and right-side S–6 lap splices, as applicable. The installation of the acceptable skin doublers is required on the side of the airplane that does not have the doublers already. The installation includes doing an open-hole high-frequency eddy current (HFEC) inspection of the skin for cracking, and trimming out cracking as applicable. Do all actions in accordance with the alert service bulletin. Doing this installation terminates the repetitive related investigative actions required by paragraph (i) of this AD.

Note 1: The alert service bulletin refers to Boeing Service Bulletins 747–53–2253, Revision 3, dated March 24, 1994; and 747–53–2272, Revision 18, dated May 16, 2002; as additional sources of service information for accomplishment of the modification (installation of acceptable external skin doublers).

Note 2: AD 90–06–06, amendment 39–6490, requires, among other actions, a modification as specified in Boeing Service Bulletin 747–53–2253, dated December 14, 1984.

Note 3: AD 90–23–14, amendment 39–6801, requires inspections as specified in Boeing Service Bulletin 747–53–2253, Revision 2, dated March 29, 1990.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

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

(4) AMOCs approved previously in accordance with AD 2008–10–15 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on September 12, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22211 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0070]

RIN 1625–AA87

Security Zone; Port of Mayaguez, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around cruise ships entering, departing, mooring or anchoring at the Port of Mayaguez, Puerto Rico. This proposed regulation is necessary to protect cruise ships operating in this port. All vessels, with the exception of servicing pilot boat and assisting tug boats, would be prohibited from entering the security zones without the express permission of the Captain of the Port San Juan or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before November 24, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0070 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Ensign Rachael Love of Sector San Juan, Prevention Operations Department at (787) 289–2071. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0070), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' enter the docket number for this rulemaking (USCG–2008–0070) in the Docket ID box, and click enter. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the U.S. Coast Guard, Sector San Juan, 5 Calle La Puntilla, San Juan, Puerto Rico 00901 between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can 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 a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing operations in the Middle East have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to these concerns, security zones around passenger vessels are necessary to ensure the safety and protection of the passengers aboard. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the ''Magnuson Act''), and implementing the regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

The Coast Guard has established similar rules in the ports of San Juan, St. Thomas (33 CFR 165.762), and Frederiksted (33 CFR 165.763). This regulation was not necessary in the past because cruise ships only recently began to hail at the port of Mayaguez.

For the aforementioned reasons, the Coast Guard proposes to establish moving and fixed security zones to prevent vessels or persons from accessing the navigable waters around and under passenger vessels in the Port of Mayaguez, Puerto Rico. Due to the continued heightened security concerns, this proposed rule is necessary to provide for the safety of the port, the vessels, and the passengers and crew on the vessels.

Discussion of Proposed Rule

This proposed rule would require all persons and vessels to remain at least 50 yards from any cruise ship in the Port of Mayaguez while the cruise ship is transiting, anchored, or moored. The main purpose of the proposed rule is to ensure the safety of all persons onboard the cruise ship, the cruise ship itself, the environment, and the Port of Mayaguez during a cruise ship's presence in the port.

Regulatory Analyses

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

This rule may impact the public, but these potential impacts would be minimized for the following reason: there is ample room for vessels to navigate around this proposed security zone. Also, the Captain of the Port San Juan may, on a case-by-case basis, allow persons or vessels to enter the proposed security zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit, anchor, or moor within 50 yards of a cruise ship in the Port of Mayaguez. This proposed regulation will not have a significant impact on a substantial number of small entities because cruise ships infrequently visit the Port of Mayaguez and small vessel traffic would be able to safely transit around the security zones. The Captain of the Port San Juan may, on a case-by-case basis, allow persons or vessels to enter the proposed security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Rachael Love of Sector San Juan, Prevention Operations Department at (787) 289–2071. 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 proposed rule would call 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. An environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.778 to read as follows:

§ 165.778 Security Zone; Port of Mayaguez, Puerto Rico.

(a) *Security zone.* A moving and fixed security zone is established around all cruise ships entering, departing, mooring, or anchoring in the Port of Mayaguez, Puerto Rico. The regulated area includes all waters from surface to bottom within a 50-yard radius of the vessel. The zone is activated when a cruise ship on approach to the Port of Mayaguez enters within 1 nautical mile of the Bahia de Mayaguez Range Front Light located in position 18°13′12″ N, 067°10′46″ W. The zone is deactivated when a cruise ship departs the Port of Mayaguez and is no longer within 1 nautical mile of the Bahia de Mayaguez Range Front Light.

(b) *Definitions.* As used in this section:

Cruise ship means a passenger vessel greater than 100 feet in length that is authorized to carry more than 150 passengers for hire, except for a ferry.

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and Federal, State, and local officers designated by or assisting the COTP San Juan in the enforcement of the safety zone.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels and servicing pilot and tug boats.

(c) *Regulations.* (1) No person or vessel may enter into the security zone under this section unless authorized by the Captain of the Port San Juan.

(2) Vessels seeking to enter a security zone established in this section, may contact the COTP on VHF channel 16 or by telephone at (787) 289–2041 to request permission.

(3) All persons and vessels granted permission to enter the security zone must comply with the orders of the COTP and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: September 2, 2008.

E. Pino,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. E8–22242 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0456; SW FRL–8713–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by BAE Systems, Inc. (BAE) to exclude (or delist) a certain solid waste generated by its Sealy, Texas, facility from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) Version 3.0 in the evaluation of the impact of the petitioned waste on human health and the environment.

DATES: We will accept comments until October 23, 2008. We will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by October 8, 2008. The request must contain the information prescribed in 40 CFR 260.20(d) (hereinafter all CFR cites refer to 40 CFR unless otherwise stated).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0456 by one of the following methods:

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

2. *E-mail: jacques.wendy@epa.gov.*

3. *Mail:* Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier:* Deliver your comments to: Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–F, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0456. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic 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 Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2008–0456, is available for viewing from 8 a.m. to 5 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For further technical information concerning this document or for appointments to view the docket or the BAE facility petition, contact Wendy Jacques, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202, by calling 214–665–7395 or by e-mail at *jacques.wendy@epa.gov*.

SUPPLEMENTARY INFORMATION: BAE submitted a petition under 40 CFR 260.20 and 260.22(a). Section 260.20 allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

The Agency bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the processes minimize short-term and long-term threats from the petitioned waste to human health and the environment. The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will BAE manage the waste, if it is delisted?
D. When would the proposed delisting exclusion be finalized?
E. How would this action affect states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What waste did BAE petition EPA to delist?
B. Who is BAE and what process do they use to generate the petitioned waste?
C. What information did BAE submit to support this petition?
D. What were the results of BAE's analysis?
E. How did EPA evaluate the risk of delisting this waste?
F. What changes have been made to the DRAS model?
G. What did EPA conclude about BAE's analysis?
H. What other factors did EPA consider in its evaluation?
I. What is EPA's evaluation of this delisting petition?
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A. With what conditions must the petitioner comply?
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A. How may I as an interested party submit comments?
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VI. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing to grant the delisting petition submitted by BAE to have its waste filter cake (F019 listed hazardous waste) excluded, or delisted, from the definition of a hazardous waste.

B. Why is EPA proposing to approve this delisting?

BAE's petition requests a delisting for the waste filter cake derived from the treatment of hazardous waste water listed as F019. BAE does not believe that the petitioned waste meets the criteria for which EPA listed it. BAE also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from the facility is based on the information submitted in support of this rule, including descriptions of the waste and analytical data from the BAE, Sealy, Texas facility.

C. How will BAE manage the waste, if it is delisted?

BAE will dispose of the waste filter cake in a Subtitle D landfill. The Subtitle D landfill should be permitted or approved by a State regulatory agency.

D. When would the proposed delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion.

Thus, EPA will not grant the exclusion unless and until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1), at 42 USCA 6930(b)(1), allows rules to become effective in less than six months after EPA addresses public comments when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect the states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions (e.g., Oklahoma, Louisiana, etc.).

EPA allows the states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law. Delisting petitions approved by EPA Administrator or his designee under § 260.22 are effective in the State of Texas only after the final rule has been published in the **Federal Register**.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not believe the wastes should be hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. See part 261 and the background documents for the listed waste.

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists to determine that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did BAE petition EPA to delist?

BAE petitioned EPA on December 23, 2005, to exclude from the lists of hazardous waste contained in § 261.31, the waste filter cake from its waste water treatment plant.

The waste filter cake is generated from the BAE facility located in Sealy, Texas. The waste filter cake is listed under EPA Hazardous Waste No. F019, because it is derived from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Specifically, in its petition, BAE requested that EPA grant exclusion for 1,200 cubic yards per calendar year of F019 waste resulting from the treatment of waste waters from the manufacturing processes at its facility.

B. Who is BAE and what process do they use to generate the petitioned waste?

BAE manufactures trucks for the U.S. Army. Manufacturing consists of machining, cutting, welding, metal prep and priming, painting, assembly and final prep. Wastewater is treated and discharged to waters of the United States through permitted outfalls.

BAE's preprocess steps include fabrication and surface preparation and coating. The waste stream is a by-product of one main manufacturing process consisting of five process lines; Steel E-Coat (E-Coat 1 and E-Coat 2), Small Parts Steel E-Coat, Long-Term Armored Survivability (LTAS) and Small Parts Aluminum E-Coat. The waste generated is a solid by-product of BAE's wastewater treatment system.

BAE intends to dispose of the delisted waste filter cake at a Subtitle D Landfill. Treatment of the waste waters, which result from the manufacturing process generates the waste filter cake that is classified as F019 listed hazardous wastes pursuant to § 261.31. The 40 CFR

part 261, Appendix VII hazardous constituents, which are the basis for listing F019 hazardous wastes are: hexavalent chromium and cyanide.

C. What information did BAE submit to support this petition?

To support its petition, BAE submitted:

(1) Analytical results of the toxicity characteristic leaching procedure and total constituent analysis for volatile and semivolatile organics, pesticides, herbicides, dioxins/furans, PCBs and metals for seven filter cake samples;

(2) Analytical results from multiple pH leaching of metals; and

(3) Description of the waste water treatment process.

D. What were the results of BAE's analysis?

EPA believes that the descriptions of BAE's waste, and the analytical data submitted in support of the petition show that the filter cake is non-hazardous. Analytical data from BAE's filter cake samples were used in the DRAS program. The data summaries for detected constituents are presented in Table 1. EPA has reviewed the sampling procedures used by BAE and has determined that they satisfy EPA's criteria for collecting representative samples of the variations in constituent concentrations in the filter cake. The data submitted in support of the petition show that constituents in BAE's wastes are presently below health-based risk levels used in the delisting decision-making. EPA believes that BAE has successfully demonstrated that the filter cake is non-hazardous.

TABLE 1—ANALYTICAL RESULTS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATIONS OF THE FILTER CAKE [1]

Constituent	Maximum total (mg/kg)	Maximum TCLP (mg/l)	Maximum allowable TCLP delisting level (mg/L)
Acetone	3.8	<.50	3211
Arsenic	2.69	.0108	.052
Barium	47.5	.0148	100
Bis(2-ethylhexyl)phthalate	2.3	.010	103
Cadmium	2.93	.0500	.561
Chloroform	.013	<.010	.4924
Chromium	2740	1.82	5.00
Copper	99.2	.371	149
Cyanide	2.06	.065	19
Furans	.00000893	.0000000536	3.57
Hexavalent Chromium	<2.00	.0253	5
Lead	21.2	<.0500	3.57
Lindane	<.0017	.00011	.4
Methyl Ethyl Ketone	.034	<.20	200
Nickel	6860	.0235	82.2
Selenium	<.806	.144	1
2,4,5,-TP (Silvex)	.77	.0061	1
2,4-D	.0050	.0078	6.65
Tin	319	.162	9001
Tetrachlorodibenzo-p-dioxins	.0000716	.0000000134	249
Tetrachloroethylene	.020	<.10	.125685
Zinc	3190	.81	1240

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

< Denotes that the constituent was below the detection limit.

E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the sludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, soil, air) for hazardous constituents present in the sludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the wastes. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-

based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the facilities have never directly disposed of this material in a solid waste landfill, so no representative data exists. Therefore, EPA has determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of the wastes and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents of the filter cake are presented in Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, the petitioned waste should be delisted because no constituents of concern are likely to be present or formed as reaction products or by-products in BAE's waste.

F. What changes have been made to the DRAS model?

Since 2004, U.S. EPA has been preparing an update of the *Delisting Risk Assessment Software (DRAS)* Version 2.0. The updates will be released as DRAS version 3.0. The update addresses a number of issues with version 2 and improved the fate and transport modeling.

To estimate the downgradient concentrations of waste leachate constituents released into groundwater, the *DRAS* utilizes conservative dilution-attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's *Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0* includes all new DAFs from new *CMTP* modeling runs. The new modeling takes advantage of: updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of *DRAS* have changed. Further affecting the groundwater calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of *DRAS*, resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments.

The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. *DRAS 3.0* now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in *DRAS* by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to *DRAS* lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, *DRAS 3.0* will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration.

EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of *DRAS,* this value was conservatively set at 100 trips per day, corresponding with an extremely high annual waste volume. In DRAS 3.0, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes.

EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of *DRAS*. We also made a unit-conversion factor correction to part of the air-volatile pathway which will reduce the impact to the receptor.

An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations.

For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of *DRAS* assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. *DRAS 3.0* does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations.

DRAS Version 3.0 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of *DRAS*, the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The *DRAS 3.0* maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900 minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom).

EPA resolved the inconsistencies with the way *DRAS* chooses limiting

pathways for specific waste constituents in *DRAS 3.0*.

EPA checked all toxicity reference values in *DRAS* and updated where necessary. Approximately 180 changes were made to the toxicity reference values in *DRAS* based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to DRAS 3.0 is consistent with Agency policy. See the Delisting Technical Support Document for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the filter cake are presented in Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, the petitioned waste should be delisted because no constituents of concern are likely to be present or formed as reaction products or by-products in BAE's waste.

G. What did EPA conclude about BAE's analysis?

EPA concluded, after reviewing BAE's processes that no other hazardous constituents of concern, other than those for which BAE tested, are likely to be present or formed as reaction products or by-products in BAE's wastes. In addition, on the basis of explanations and analytical data provided by BAE, pursuant to § 260.22, EPA concludes that the petitioned waste, filter cake, does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. See §§ 261.21, 261.22, 261.23, and 261.24, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of this petition, in addition to the potential impacts to the ground water, EPA also considered the potential impact of the petitioned waste via non-ground water exposure routes (*i.e.*, air emissions and surface runoff) for the filter cake. With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from the petitioned waste is unlikely. No appreciable air releases are likely from the filter cake under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from the waste water in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from the filter cake.

I. What is EPA's evaluation of this delisting petition?

The descriptions by BAE of the hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the petition. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable concentrations (See Table 1). EPA believes that the filter cake generated by BAE contains hazardous constituents at levels which will present minimal short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes that it should grant to BAE an exclusion from the list of hazardous wastes for the filter cake. EPA believes that the data submitted in support of the petition show the BAE's filter cake to be non-hazardous.

EPA has reviewed the sampling procedures used by BAE and has determined they satisfy EPA's criteria for collecting representative samples of variable constituent concentrations in the filter cake. The data submitted in support of the petition show that constituents in BAE's wastes are presently below the compliance-point concentrations used in the delisting decision-making process and would not pose a substantial hazard to the environment and the public. EPA believes that BAE has successfully demonstrated that the filter cake is non-hazardous.

EPA, therefore, proposes to grant an exclusion to BAE for the filter cake described in its December 2005 petition. EPA's decision to exclude this waste is based on analysis performed on samples taken of the filter cake.

If EPA finalizes the proposed rule, EPA will no longer regulate 1,200 cubic yards/year of filter cake from BAE's Sealy facility under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, BAE, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituent concentrations for which BAE must test in the filter cake, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) and listed in 40 CFR part 261, Appendix IX, Table 2, based on information in the petition. EPA compiled the inorganic and organic constituents list from descriptions of the manufacturing process used by BAE, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the leachable concentrations of the filter cake.

(2) Waste Holding and Handling

Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) has occurred for two consecutive quarterly sampling events. For example, if BAE is issued a final exclusion in August, the first quarter samples are due in November and the second quarter samples are due in February. If EPA deems that both the first and second quarter samples (a total of four) meet all the delisting limits, classification of the waste as non-hazardous can begin in March. If constituent levels in any sample taken by BAE exceed any of the delisting levels set in paragraph (1), BAE must: (i) notify EPA in accordance with paragraph (6), and; (ii) manage and dispose of the filter cake as hazardous waste generated under Subtitle C of RCRA.

(3) Verification Testing Requirements

BAE must complete a verification testing program on the filter cake to assure that the wastes do not exceed the maximum levels specified in paragraph (1). If EPA determines that the data collected under this paragraph do not support the data provided in the petition, the exclusion will not cover the tested waste. This verification program operates on two levels.

The first part of the quarterly verification testing program consists of testing a batch of filter cake for specified indicator parameters as described in paragraph (1). Each quarterly sampling event will consist of at least two samples of the filter cake. Levels of constituents measured in the samples of the filter cake that do not exceed the levels set forth in paragraph (1) can be considered non-hazardous after two consecutive quarters of sampling data meet the levels listed in paragraph (1).

The second part of the verification testing program is the annual testing of two representative composite samples of the filter cake for all constituents specified in paragraph (1).

If BAE demonstrates for two consecutive quarters complete attainment of all specified limits, then BAE may request approval of EPA to reduce the frequency of testing to annually. If, after review of performance of the treatment system, EPA finds that annual testing is adequately protective of human health and the environment, then EPA may authorize BAE to reduce the quarterly comprehensive sampling frequency to an annual basis. If the annual testing of the wastes does not meet the delisting levels in paragraph (1), BAE must notify EPA according to the requirements in paragraph (6). EPA will then take the appropriate actions necessary to protect human health and the environment as described in paragraph (6). BAE must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

The exclusion is effective upon publication in the **Federal Register** but the change in waste classification as ''non-hazardous'' cannot begin until two consecutive quarters of verification sampling comply with the levels specified in paragraph (1). The waste classification as ''non-hazardous'' is also not authorized, if BAE fails to perform the quarterly and yearly testing as specified herein. Should BAE fail to conduct the quarterly/yearly testing as specified herein, then disposal of filter cake as delisted waste may not occur in the following quarter(s)/year(s) until BAE obtains the written approval of EPA.

(4) Changes in Operating Conditions

Paragraph (4) would allow BAE the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment processes. However, BAE must prove the effectiveness of the modified process and request approval from EPA. BAE must manage wastes generated during the new process demonstration as hazardous waste through verification sampling within 30 days of start-up.

(5) Data Submittals

To provide appropriate documentation that the BAE facility is correctly managing the filter cake, BAE must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained pursuant to paragraph (3), including quality control information, for five years. Paragraph (5) requires that BAE furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, then it will apply only to 1,200 cubic yards per calendar year of filter cake generated at the BAE facility after successful verification testing.

EPA would require BAE to submit additional verification data under any of the following circumstances:

(a) If BAE significantly alters the manufacturing process treatment system except as described in paragraph (4).

(b) If BAE uses any new manufacturing or production process(es), or significantly changes the current process(es) described in its petition; or

(c) If BAE makes any changes that could affect the composition or type of waste generated.

BAE must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. EPA will publish an amendment to the exclusion if the changes are acceptable.

BAE must manage waste volumes greater than 1,200 cubic yards of filter cake as hazardous waste until EPA grants a revised exclusion. When this exclusion becomes final, the management by BAE of the filter cake covered in this petition would be relieved from Subtitle C jurisdiction. BAE may not classify the waste as non-hazardous until the revised exclusion is finalized.

(6) Reopener

The purpose of paragraph (6) is to require BAE to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. BAE must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which it based the decision to see if it is still correct or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires BAE to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notice regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA 553(b)(3)(B).

B. What happens, if BAE violates the terms and conditions?

If BAE violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects BAE to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to the Chief, Corrective Action and Waste Minimization Section, Multimedia Permitting and Planning Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to the Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711–3087. Identify your comments at the top with this regulatory docket number: EPA–R06–RCRA–2008–0456. You may submit your comments

electronically to Wendy Jacques at *jacques.wendy@epa.gov*.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, TX 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages and at fifteen cents per page for additional copies.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, 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, ''Federalism,'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 29, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, EPA Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX of Part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * *
BAE Systems, Inc.	Sealy, TX	Filter Cake (EPA Hazardous Waste Number F019) generated at a maximum rate of 1,200 cubic yards per calendar year after [insert publication date of the final rule]. For the exclusion to be valid, BAE must implement a verification testing program that meets the following Paragraphs:

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Filter Cake Leachable Concentrations (mg/l): Acetone—3211; Arsenic—0.052; Barium—100; Bis(2-ethylhexyl)phthalate—103; Cadmium—0.561; Chloroform—0.4924; Chromium—5.0; Copper—149; Cyanide—19; Furans—3.57; Hexavalent Chromium—5.0; Lead—3.57; Lindane—0.4; Methyl Ethyl Ketone—200; Nickel—82.2; Selenium—1.0; 2,4,5–TP (Silvex)—1.0; 2,4–D—6.65; Tin—9001; Tetrachlorodibenzo-p-dioxin—249; Tetrachloroethylene—0.125685; Zinc—1240. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous can not begin until compliance with the limits set in paragraph (1) for filter cake has occurred for two consecutive quarterly sampling events. (B) If constituent levels in any sample taken by BAE exceed any of the delisting levels set in paragraph (1) for the filter cake, BAE must do the following: (i) Notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the filter cake as hazardous waste generated under Subtitle C of RCRA. (3) Testing Requirements: Upon this exclusion becoming final, BAE may perform quarterly analytical testing by sampling and analyzing the filter cake as follows: (A) Quarterly Testing: (i) Collect two representative composite samples of the filter cake at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the filter cake must be disposed as hazardous waste in accordance with the applicable hazardous waste requirements. (iii) Within thirty (30) days after taking its first quarterly sample, BAE will report its first quarterly analytical test data to EPA. If levels of constituents measured in the samples of the filter cake do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, BAE can manage and dispose the non-hazardous filter cake according to all applicable solid waste regulations. (B) Annual Testing: (i) If BAE completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent at a level which exceeds the limits set forth in paragraph (1), BAE may begin annual testing as follows: BAE must test two representative composite samples of the filter cake for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that samples of the BAE filter cake are representative for all constituents listed in paragraph (1). (iii) The samples for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (iv) The annual testing report should include the total amount of waste in cubic yards disposed during the calendar year.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) Changes in Operating Conditions: If BAE significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing and it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. BAE must submit a modification to the petition complete with full sampling and analysis for circumstances where the waste volume changes and/or additional waste codes are added to the waste stream. (5) Data Submittals: BAE must submit the information described below. If BAE fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). BAE must: (A) Submit the data obtained through paragraph 3 to the Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, Texas 75202, within the time specified. All supporting data can be submitted on CD–ROM or some comparable electronic media. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either EPA or the State of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (6) Reopener: (A) If, anytime after disposal of the delisted waste BAE possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph 1, BAE must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If BAE fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 2—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: BAE Systems must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. E8–21227 Filed 9–22–08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2008–0457; SW–FRL–8713–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Cooper Crouse-Hinds (C–H) to exclude (or delist) a wastewater treatment plant (WWTP) sludge and filter sand (collectively, sludge) generated by C–H in Amarillo, TX from the lists of hazardous wastes. EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that C–H's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that C–H's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: We will accept comments until October 23, 2008. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decision.

Your requests for a hearing must reach EPA by October 8, 2008. The request must contain the information described in § 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–RCRA–2008–0457 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov:* follow the on-line instructions for submitting comments.

2. *E-mail: kim.youngmoo@epa.gov.*

3. *Mail:* Youngmoo Kim, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

4. *Hand Delivery or Courier:* Deliver your comments to: Youngmoo Kim, Environmental Protection Agency, Multimedia Planning and Permitting Division, RCRA Branch, Mail Code: 6PD–C, 1445 Ross Avenue, Dallas, TX 75202.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2008–0457. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, RCRA Branch, 1445 Ross Avenue, Dallas, TX 75202. The hard copy RCRA regulatory docket for this proposed rule, EPA–R06–RCRA–2008–0457, is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public may copy material from the regulatory docket at no cost for the first 100 pages and at $0.15 per page for additional copies. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: For technical information regarding the Cooper Crouse-Hinds petition, contact Youngmoo Kim at 214–665–6788 or by e-mail at *kim.youngmoo@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA proposing?
B. Why is EPA proposing to approve this delisting?
C. How will C–H manage the waste, if it is delisted?
D. When would the proposed delisting exclusion be finalized?
E. How would this action affect states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must EPA consider in deciding whether to grant a delisting petition?
III. EPA's Evaluation of the Waste Information and Data
A. What waste did C–H petition EPA to delist?
B. Who is C–H and what process does it use to generate the petitioned waste?
C. How did C–H sample and analyze the data in this petition?
D. What were the results of C–H's analyses?
E. How did EPA evaluate the risk of delisting this waste?
F. What changes have been made to the DRAS model?
G. What did EPA conclude about C–H's analysis?
H. What other factors did EPA consider in its evaluation?
I. What is EPA's evaluation of this delisting petition?
IV. Next Steps
A. With what conditions must the petitioner comply?
B. What happens if C–H violates the terms and conditions?
V. Public Comments
A. How may I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusion?
VI. Statutory and Executive Order Reviews

I. Overview Information

A. What action is EPA proposing?

EPA is proposing:

(1) To grant C–H's delisting petition to have its WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why is EPA proposing to approve this delisting?

C–H's petition requests an exclusion from the F006 waste listing pursuant to 40 CFR 260.20 and 260.22. C–H does not believe that the petitioned waste meets the criteria for which EPA listed it. C–H also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from C–H is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Amarillo, TX facility.

C. How will C–H manage the waste, if it is delisted?

If the sludge is delisted, the WWTP sludge from C–H will be disposed of at the following RCRA Subtitle D lined landfill with a leachate collection system: The Allied Waste Service Southwest Subtitle D landfill in Canyon, Texas.

D. When would the proposed delisting exclusion be finalized?

RCRA section 3001(f) specifically requires EPA to provide a notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would

reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How would this action affect states?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If C–H transports the petitioned waste to or manages the waste in any state with delisting authorization, C–H must obtain delisting authorization from that state before it can manage the waste as non-hazardous in the state.

II. Background

A. What is the history of the delisting program?

EPA published an amended list of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under §§ 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' or ''derived-from'' rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What is a delisting petition, and what does it require of a petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What factors must EPA consider in deciding whether to grant a delisting petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See §§ 261.3(a)(2)(iii and iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What waste did C–H petition EPA to delist?

On March 25, 2008, C–H petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F006) generated from its facility located in Amarillo, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, C–H requested that EPA grant a standard exclusion for 819 cubic yards per year of the WWTP sludge.

B. Who is C–H and what process does it use to generate the petitioned waste?

The facility manufactures electrical fittings plated zinc for corrosion resistance. Non-current electrical wiring system products commonly called conduit fitting have been manufactured at this facility since 1982. The zinc plating system is non-cyanide containing zinc chloride to electroplate zinc onto cast gray iron electrical fittings to reduce the potential for the fittings to corrode when installed in outdoor or chemical environment. The sludge is generated by wastewater treatment of the zinc plating rinse water to remove oil, grease and metals.

The sludge is transferred to filter press and separate particles from the liquid, creating the filter press sludge cake. The final stage of wastewater treatment system includes two sand filters that serve to polish the discharged water. The sludge cake and used sands are listed as listed hazardous, F006 and disposed in a RCRA Subtitle C permitted hazardous waste landfill in Emelle, Alabama.

C. How did C–H sample and analyze the data in this petition?

To support its petition, C–H submitted:

(1) Historical information on waste generation and management practices;

(2) Analytical results from four samples for total concentrations of compounds of concern (COCs);

(3) Analytical results from four samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values of COCs; and

(4) Multiple pH testing for the petitioned waste.

D. What were the results of C–H's analyses?

EPA believes that the descriptions of the C–H analytical characterization provide a reasonable basis to grant C–H's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the WWTP sludge samples were used in the DRAS to develop delisting levels. The data summaries for COCs are presented in Table I. EPA has reviewed the sampling procedures used by C–H and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in C–H's waste are presently below health-based levels used in the delisting decision-making. EPA believes that C–H has successfully demonstrated that the WWTP sludge is non-hazardous.

TABLE 1—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION

[Wastewater Treatment Sludge—Cooper Crouse-Hinds, Amarillo, Texas]

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Arsenic	<2.00	0.072	0.0759
Barium	11.2	1.08	(100)
Benzene	<0.02	0.00218	(0.5)
Cadmium	1.58	0.006	0.819
Cooper	7.41	0.049	216
Iron	26200	0.197	1.24
Manganese	693	1.60	145
Nickel	4.71	0.014	119
Zinc	27300	1.51	1810

Notes:

1. These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific level found in one sample.
2. The delisting levels are from the DRAS analyses except the chemicals with a parenthesis which are the TCLP regulatory levels.

E. How did EPA evaluate the risk of delisting this waste?

The worst case scenario for management of the sludge was modeled for disposal in a landfill. EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, soil, air) for hazardous constituents present in the sludge. EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for the wastes. In assessing potential risks to ground water, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensured that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health and/or the environment. The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (e.g., volatilization or wind-blown particulate from the landfill). As in the above ground water analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed.

EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, the facilities have never directly disposed of this material in a solid waste landfill, so no representative data exists. Therefore, EPA has

determined that it would be unnecessary to request ground water monitoring data.

EPA believes that the descriptions of the wastes and analytical characterization which illustrate the presence of toxic constituents at lower concentrations in these waste streams provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results, which calculated the maximum allowable concentration of chemical constituents in the wastes are presented in Table 1. Based on the comparison of the DRAS results and maximum TCLP concentrations found in Table 1, the petitioned wastes should be delisted because no constituents of concern are likely to be present or formed as reaction products or by products in the wastes.

F. What changes have been made to the DRAS model?

Since July 2004, EPA has been preparing an update of the *DRAS* version 2.0. The software will be released as version 3.0. This methodology was used to evaluate the C–H petition. The DRAS 3.0 addresses a number of issues with version 2 and improved the fate and transport modeling.

To estimate the downgradient concentrations of waste leachate constituents released into ground water, the *DRAS* utilizes conservative dilution-attenuation factors (DAFs) taken from Monte-Carlo applications of U.S. EPA's *Composite Model for Leachate Migration with Transformation Products (CMTP). DRAS 3.0* includes all new DAFs from new *CMTP* modeling runs. The new modeling takes advantage of: updated saturated flow and transport modules; a new surface impoundment module and database; model corrections for unrealistic scenarios (like water tables modeled above the ground surface); new isotherms for metals; and a revised recharge and infiltration database. As a result, many of the DAFs used in previous versions of *DRAS* have changed.

Further affecting the ground water calculation, the relationships for determining scaling factors used to scale the DAFs to account for very small waste streams have been updated to reflect the new database information on landfills and surface impoundments and were also corrected for a metric conversion of cubic meters to cubic yards. The new scaling factors are generally higher than those of previous versions of *DRAS,* resulting in higher estimated dilution and attenuation at lower waste volumes for both landfills and surface impoundments.

The new metals DAFs, based on MINTEQA2 isotherms, can vary as a function of the landfill leachate concentration. This means that the effective DAF (including a scaling factor adjustment, if necessary) for an input concentration may differ significantly with the effective DAF that corresponds to the allowable leachate concentration. *DRAS 3.0* now displays the DAFs in both the forward calculated risk tables and the tables of maximum allowable concentrations so that the difference is evident to the user. The isotherms that vary by leachate concentration are represented in *DRAS* by a look-up table with leachate concentrations paired with DAFs. In the event that an actual concentration input to *DRAS* lies between two values in the table, or an allowable receptor concentration lies between two calculated receptor concentrations from the table, *DRAS 3.0* will linearly and proportionally extrapolate between the two values to determine the corresponding exposure or allowable leachate concentration.

EPA changed the calculation for particle emissions caused by vehicles driving over the waste at the landfill to provide a more realistic estimate. The estimate depends upon the number of trips per day landfill vehicles make back and forth over the waste. In previous versions of *DRAS,* this value was conservatively set at a 100 trips per day, corresponding with an extremely high annual waste volume. In DRAS 3.0, a minimum number of trips per day was conservatively assumed from the Subtitle D landfill survey (7.4 trips per day at the 95th percentile of values reported). The number of trips per day specific to the actual waste volume is then added to the minimum to reflect the impact of very large waste streams. This will considerably reduce the particle emission estimate for wastes generated at all but the largest annual volumes.

EPA added a conversion from English to metric tons to the calculation of particle emissions from waste unloading, resulting in a decrease of roughly 10% over previous versions of *DRAS*. We also made a unit-conversion factor correction to part of the air-volatile pathway which will reduce the impact to the receptor.

An error in the back-calculation for fish ingestion pathway was corrected to reflect the difference between freely dissolved and total water column waste constituent concentrations.

For the estimation of risk and hazard, we made a number of updates to the forward and back calculations. Previous versions of *DRAS* assumed that only 12.5% of particles are absorbed by the receptor's respiratory system. This is no longer necessary as toxicity reference values for inhalation currently recommended by U.S. EPA relate risk or hazard directly to exposure concentration. *DRAS 3.0* does not include the 12.5% reduction. This change significantly increases estimated risks due to particle inhalation and lowers corresponding allowable concentrations.

DRAS Version 3.0 has a reformulated back calculation of the allowable leachate concentrations from exposure due to contaminants volatilized during household water use to match the forward calculation of risk. In previous versions of *DRAS,* the forward calculation summed the risks from exposure to all three evaluated household compartments (the shower, the bathroom, and the whole house) while the back calculation based the maximum allowable level on the single most conservative compartment. The *DRAS 3.0* maximum allowable leachate concentrations are now based on the combined impact of all three compartments. The house exposure was also expanded to a 900-minute (15 hour) daily exposure to reflect non-working residents who have an overall 16 hour in-house exposure (the other 1 hour is spent in the shower and bathroom).

EPA resolved the inconsistencies with the way *DRAS* chooses limiting pathways for specific waste constituents in *DRAS 3.0*.

EPA checked all toxicity reference values in *DRAS* and updated where necessary. Approximately 180 changes were made to the toxicity reference values in *DRAS* based on data in IRIS, PPRTV, HEAST, NCEA, CalEPA and other sources. Some route-to-route extrapolations of oral toxicity data to inhalation exposure have been returned to DRAS 3.0 if consistent with Agency policy. See the Delisting Technical Support Document for full accounting of this methodology. The same reference also includes discussions of toxicity reference choices where the multiple values were available or where the toxicity reference values were specific to particular species of constituents.

G. What did EPA conclude about C–H's analysis?

EPA concluded, after reviewing C–H's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products

or by-products in the waste. In addition, on the basis of explanations and analytical data provided by C–H, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 and 261.23, respectively.

H. What other factors did EPA consider in its evaluation?

During the evaluation of C–H's petition, EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from C–H's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from C–H's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from C–H's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from C–H's WWTP waste.

I. What is EPA's evaluation of this delisting petition?

The descriptions of C–H's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations (see Table I). EPA believes that C–H's waste, F006 from zinc electroplating process will not impose any threat to human health and the environment.

Thus, EPA believes C–H should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show C–H's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in C–H's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that C–H has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to C–H in Amarillo, Texas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the WWTP sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With what conditions must the petitioner comply?

The petitioner, C–H, must comply with the requirements in 40 CFR part 261, appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which C–H must test the WWTP sludge, below which these wastes would be considered non-hazardous. EPA selected the set of inorganic and organic constituents specified in paragraph (1) of 40 CFR part 261, appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of C–H's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP concentrations.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that C–H manages and disposes of any WWTP sludge that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the WWTP sludge as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

C–H must complete a rigorous verification testing program on the WWTP sludge to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. This verification program operates on two levels. The first part of the verification testing program consists of testing the WWTP sludge for specified indicator parameters as per paragraph (1) of the exclusion language. If EPA determines that the data collected under this paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, C–H may request quarterly testing. EPA will notify C–H in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of WWTP sludge for all constituents specified in paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the WWTP sludge may vary over time. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that C–H operates a treatment facility where the constituent concentrations of the WWTP sludge do not exhibit unacceptable temporal and spatial levels of toxic constituents. EPA is proposing to require C–H to analyze representative samples of the WWTP sludge quarterly during the first year of waste generation. C–H would begin quarterly sampling 60 days after the final exclusion as described in paragraph (3)(B) of the exclusion language. EPA, per paragraph 3(C) of the exclusion language, is proposing to end the subsequent testing conditions after the first year, if C–H has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, C–H must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language; C–H must reinstate all testing in paragraph (1) of the exclusion language. C–H must prove through a new demonstration that their waste meets the conditions of the exclusion. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), C–H must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support

the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) of the exclusion language would allow C–H the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, C–H must prove the effectiveness of the modified process and request approval from EPA. C–H must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and paragraph (3) of the exclusion language is satisfied.

(5) Data Submittals

To provide appropriate documentation that C–H's WWTP sludge is meeting the delisting levels, C–H must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that C–H furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas. If the proposed exclusion is made final, it will apply only to 819 yards per year of wastewater treatment sludge generated at the C–H after successful verification testing.

EPA would require C–H to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in paragraph (4) of the exclusion language;

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in their petition; or

(c) If it makes any changes that could affect the composition or type of waste generated.

C–H must manage waste volumes greater than 819 cubic yards per year of WWTP waste as hazardous until EPA grants a new exclusion. When this exclusion becomes final, C–H's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction, the WWTP sludge from C–H will be disposed to the RCRA Subtitle D landfill of the Allied Waste Service Southwest in Canyon, TX.

(6) Reopener

The purpose of paragraph (6) of the exclusion language is to require C–H to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. C–H must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires C–H to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes that it has the authority under RCRA and the Administrative Procedure Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting. EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. *See* APA 553(b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that C–H provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. C–H must provide this notification 60 days before commencing this activity.

B. What happens if C–H violates the terms and conditions?

If C–H violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects C–H to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How may I as an interested party submit comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Jackee Hardy, Waste Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, TX 78711. Identify your comments at the top with this regulatory docket number: ''EPA–R06–RCRA–2008–0457.'' You may submit your comments electronically to Youngmoo Kim at *kim.youngmoo@epa.gov*.

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How may I review the docket or obtain copies of the proposed exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is

not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, 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, ''Federalism'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 28, 2008.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, EPA Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* *	* *	* * *
Cooper Crouse-Hinds	Amarillo , TX	Wastewater Treatment Sludge (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 819 cubic yards per calendar year after [insert publication date of the final rule] will be disposed in Subtitle D landfill. For the exclusion to be valid, C–H must implement a verification testing program that meets the following paragraphs: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP): Arsenic-0.0759; Barium-100; Cadmium-0.819; Copper-216; Iron-1.24; Manganese-145; Nickel-119; Zinc-18; Benzene-0.5. (2) *Waste Management:* (A) C–H must manage as hazardous all WWTP sludge generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph(1) is satisfied. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. C–H can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1) C–H can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, C–H must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1) C–H must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (D) Upon completion of the verification testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), C–H may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent Verification Testing indicates an exceedance of the Delisting Levels in paragraph (1), C–H must manage the WWTP sludge as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in paragraph (1). (3) *Verification Testing Requirements:* C–H must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 8260B, 1311/8260B, 8270C, 1311/8270C, 6010B. 7470, 9034A, 9012A, ASTMD–4982B, ASTMD–5049, E413.2. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of C–H's F006 sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, C–H may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). C–H Plant must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B). (A) *Initial Verification Testing:* After EPA grants the final exclusion, C–H must do the following: (i) Within 60 days of this exclusions becoming final, collect eight samples, before disposal, of the WWTP sludge. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, C–H will report initial verification analytical test data for the WWTP sludge, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, C–H can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. (B) *Subsequent Verification Testing:* Following written notification by EPA, C–H may substitute the testing conditions in (3)(B) for (3)(A). C–H must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the wastewater treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1). (C) *Termination of Testing:* (i) After the first year of quarterly testing, if the Delisting Levels in paragraph (1) are met, C–H may then request that EPA not require quarterly testing. (ii) Following cancellation of the quarterly testing, C–H Plant must continue to test a representative sample for all constituents listed in paragraph (1) annually.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) *Changes in Operating Conditions:* If C–H significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the Delisting Levels set in paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* C–H must submit the information described below. If C–H fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph 6.C–H must: (A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Re-Opener:* (A) If, anytime after disposal of the delisted waste, C–H possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), C–H must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If C–H fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements:* C–H must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

[FR Doc. E8–21228 Filed 9–22–08; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 73, No. 185

Tuesday, September 23, 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

Agricultural Marketing Service

[Doc. No. AMS–AMS–08–0083; TM–08–12]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: The meeting dates are Monday, November 17, 2008, 9 a.m. to 5 p.m.; Tuesday, November 18, 2008, 8 a.m. to 5 p.m.; and Wednesday, November 19, 2008, 8 a.m. to 5 p.m. Requests from individuals and organizations wishing to make oral presentations at the meeting are due by the close of business on November 3, 2008.

ADDRESSES: The meeting will take place at the Savoy Suites Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

- Requests for copies of the NOSB meeting agenda may be sent to Ms. Valerie Frances, Executive Director, NOSB, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250–0268. The NOSB meeting agenda and proposed recommendations may also be viewed at *http://www.ams.usda.gov/nop*.
- Comments on proposed NOSB recommendations may be submitted by November 3, 2008 in writing to Ms. Frances at either the postal address above or via the Internet at *http://www.regulations.gov* only. The comments should identify Docket No. AMS–AMS–08–0083. It is our intention to have all comments to this notice whether they are submitted by mail or the Internet available for viewing on the *http://www.regulations.gov* Web site.
- Requests to make an oral presentation at the meeting may also be sent by November 3, 2008 to Ms. Valerie Frances at the postal address above, by e-mail at *valerie.frances@usda.gov*, via facsimile at (202) 205–7808, or phone at (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Valerie Frances, Executive Director, NOSB, National Organic Program (NOP), (202) 720–3252, or visit the NOP Web site at: *http://www.ams.usda.gov/nop*.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production, and to advise the Secretary on other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992, and currently has six subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; and Policy Development.

In August of 1994, the NOSB provided its initial recommendations for the NOP to the Secretary of Agriculture. Since that time, the NOSB has submitted 158 addenda to its recommendations and reviewed more than 333 substances for inclusion on the National List of Allowed and Prohibited Substances. The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

In addition, the OFPA authorizes the National List of Allowed and Prohibited Substances and provides that no allowed or prohibited substance would remain on the National List for a period exceeding 5 years unless the exemption or prohibition is reviewed and recommended for renewal by the NOSB and adopted by the Secretary of Agriculture. This expiration is commonly referred to as sunset of the National List. The National List appears at 7 CFR Part 205, Subpart G.

The principal purposes of the NOSB meeting are to provide an opportunity for the NOSB to receive an update from the USDA/NOP and hear progress reports from NOSB committees regarding work plan items and proposed action items. The last NOSB meeting was held on May 20–22, 2008, in Baltimore, MD.

At its last meeting, the Board recommended the addition of 6 materials with one on the National List § 205.601 for use in crops, with one on § 205.603 for use in livestock, and with four on § 205.606 for use in handling. The Board recommended a 2-year extension of the expiration date to October 21, 2010, on the following three substances: DL-Methionine, DL-Methionine-Hydroxy Analog; and DL-Methionine-Hydroxy Analog Calcium—for use only in organic poultry production on § 205.603.

In addition, the Board completed the sunset review process for 13 materials for use in crops and handling which are due to expire on November 3, 2008, and November 4, 2008. Of these 13 materials, there are 11 substances for use in crops and handling placed on the National List on November 3, 2003, and are scheduled to expire on November 3, 2008. Four substances for use in handling were placed on the National List on November 4, 2003, and are scheduled to expire on November 4, 2008. The Board recommended the renewal of all 13 of the exemptions and prohibitions on the National List (along with any restrictive annotations).

At this meeting, the Policy Development Committee will present recommendations regarding revisions to the NOSB Policy and Procedures Manual and the Guide for new NOSB members as well as discuss their on-going collaboration with the NOP to review the NOP responses to prior NOSB recommendations.

The Policy Development and the Materials Committees will present their joint recommendation on the procedures for assessing the need for and requesting third party technical reviews of materials petitioned for inclusion on or prohibition from the National List, or for materials which are due to expire under the sunset review process.

The Materials Committee will present its recommendation to remove materials tabled by the Board since 1992 from the table, allowing them to be eligible for possible reconsideration for inclusion on or prohibition from the National List.

The Compliance, Accreditation, and Certification Committee will present their recommendations for use as guidance by accredited certifying agents on the certification of operations with multiple production units, sites, and facilities and for the labeling of products certified as 100 percent organic.

The Compliance, Accreditation, and Certification and the Crops Committees will jointly present their recommendation offering guidance for accredited certifying agents regarding annual commercial availability determinations for the sourcing of organic seed by farmers under § 205.204.

The Crops Committee will present recommendations on the materials: Tetracycline (Oxytetracycline hydrochloride), Sorbitol octanoate, Pelargonic acid, and Ammonium salts of fatty acids petitioned for use on § 205.601.

The Livestock Committee will present recommendations on the use of fish feed and open net pens in regards to the development of organic aquaculture standards for finfish, and will present recommendations in regards to the development of organic aquaculture standards for bivalves.

The Handling Committee will present their recommendations on the materials: Sodium chlorite, acidified, Calcium, derived from seaweed, Propionic acid, and Ethylene—for use in pears, petitioned for inclusion in § 205.605 for use in organic products. The Committee will present their recommendations on the materials: Black Pepper Extract, Buck Hull Powder, Dried Orange Pulp, Chlorella algae, Dumontiacae algae, petitioned for inclusion in § 205.606 for use in organic products depending on final commercial availability determinations performed by accredited certifying agents. The committee will also present their recommendation in regards to the development of organic standards for pet food.

The meeting is open to the public. The NOSB has scheduled time for public input for Monday, November 17, 2008, from 10:45 a.m. to 5 p.m. and Tuesday, November 18, 2008, from 3:15 p.m. to 5 p.m. Individuals and organizations wishing to make oral presentations at the meeting may forward their requests by mail, facsimile, e-mail, or phone to Valerie Frances as listed in **ADDRESSES** above. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making oral presentations are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Anyone may submit written comments at the meeting. Persons submitting written comments are asked to provide 30 copies.

Interested persons may visit the NOSB portion of the NOP Web site at *http://www.ams.usda.gov/nop* to view available meeting documents prior to the meeting, or visit *http://www.regulations.gov* to submit and view comments as provided for in **ADDRESSES** above. Documents presented at the meeting will be posted for review on the NOP Web site approximately 6 weeks following the meeting.

Dated: September 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–22149 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Gary W. Clem Inc. d/b/a ALMACO of Nevada, Iowa, an exclusive license to U.S. Patent No. 6,147,503, ''Method For The Simultaneous And Independent Determination Of Moisture Content And Density Of Particulate Materials From Radio-Frequency Permittivity Measurements'', issued on November 14, 2000.

DATES: (**Federal Register**) Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Gary W. Clem Inc. d/b/a ALMACO of Nevada, Iowa has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E8–22196 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0102]

Notice of Request for Extension of Approval of an Information Collection; Importation of Christmas Cactus and Easter Cactus in Growing Media from the Netherlands and Denmark

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark.

DATES: We will consider all comments that we receive on or before November 24, 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-2008-0102* 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–2008–0102, Regulatory Analysis and Development, PPD, APHIS, Station3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0102.

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: For information on regulations for the importation of Christmas cactus and Easter cactus in growing media from the Netherlands and Denmark, contact Dr. Arnold T. Tschanz, Senior Risk Manager, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–5306. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Christmas Cactus and Easter Cactus in Growing Media from the Netherlands and Denmark.

OMB Number: 0579–0266.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The regulations contained in ''Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' prohibit or restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

Under these regulations, Christmas cactus and Easter cactus in approved growing media may be imported into the United States from the Netherlands and Denmark under certain conditions, which require the use of a phytosanitary certificate and declaration stating the plants were grown in accordance with specific conditions, an agreement between APHIS and the plant protection service of the country where the plants are grown, and an agreement between the foreign plant protection service and the grower.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5714 hours per response.

Respondents: Foreign plant protection service officials and growers in the Netherlands and Denmark.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 10.5.

Estimated annual number of responses: 210.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22193 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0109]

Notice of Request for Extension of Approval of an Information Collection; Foreign Quarantine Notices

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the introduction or spread of foreign plant pests into or within the United States.

DATES: We will consider all comments that we receive on or before November 24, 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–2008–0109* 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–2008–0109, 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–2008–0109.

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: For information on foreign quarantine regulations, contact Ms. Candace Funk, Staff Officer, Quarantine Policy, Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD

20737; (301) 734–5290. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Foreign Quarantine Notices.

OMB Number: 0579–0049.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS). Regulations governing the importation of plants, fruits, vegetables, roots, bulbs, seeds, unmanufactured wood articles, and other plant products are contained in 7 CFR part 319, ''Foreign Quarantine Notices.''

In administering the regulations, APHIS collects information from persons both within and outside the United States who are involved in growing, packing, handling, transporting, and importing articles regulated under part 319.

For example, many plants or plant products may not be imported until the person wishing to import them receives a permit from us. The person wishing to import these items must first fill out a permit application. We consider the permit application process extremely important, since the information on the application enables us to determine whether the items for import represent a potential pest threat to U.S. agriculture.

Under certain circumstances, we also require importers to supply us with other types of information. We require, for example, that containers used to import various plants or plant products be marked in a certain way so that our inspectors can accurately identify them and match them to their accompanying documentation.

We require that certain shipments be accompanied by a phytosanitary inspection certificate, which is a document completed by plant health officials in the originating country that attests to the condition of the shipment with respect to plant pests at the time it was inspected prior to its export to the United States. We use this important information as a guide in determining the intensity of the inspection we must conduct when the shipment arrives in the United States.

This and other information we collect is vital to helping us ensure that imported plants and plant products do not harbor plant pests or noxious weeds that, if introduced into the United States, could cause millions of dollars in damage to U.S. agriculture.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3167168 hours per response.

Respondents: U.S. importers of fruits and vegetables, foreign plant protection authorities, individuals involved in growing, packing, handling, transporting, and importing plants and plant products.

Estimated annual number of respondents: 92,420.

Estimated annual number of responses per respondent: 3.259987.

Estimated annual number of responses: 301,288.

Estimated total annual burden on respondents: 95,423 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22288 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0104]

Notice of Request for Revision and Extension of Approval of an Information Collection; Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision and extension of approval of an information collection associated with Animal Welfare Act regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before November 24, 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-2008-0104* 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–2008–0104, Regulatory Analysis and Development, PPD, APHIS, Station3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0104.

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: For information on the Animal Welfare Act regulations, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0093.

Type of Request: Revision and extension of approval of an information collection.

Abstract: The regulations in 9 CFR parts 1 through 3 were promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) to ensure the humane handling, care, treatment, and transportation of animals covered under the Act. The Act and regulations are enforced by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service.

The regulations in 9 CFR part 3, subparts A, D, and E, cover dogs and cats, nonhuman primates, and marine mammals, respectively. Subparts B and C cover rabbits, guinea pigs, and hamsters. Subpart F of 9 CFR part 3 covers warmblooded animals other than dogs, cats, nonhuman primates, marine mammals, rabbits, guinea pigs, and hamsters. Regulated facilities are required to keep certain records and provide specific information regarding health and feeding, housing, space, transportation, exercise, perimeter fencing, marine mammal interactive programs, and programs of veterinary care. We review this information to evaluate program compliance.

This notice includes information collection requirements currently approved by the Office of Management and Budget (OMB) under control numbers 0579–0092, ''Animal Welfare; Guinea Pigs, Hamsters, and Rabbits'' (transportation in commerce), and 0579–0093, ''Animal Welfare.'' These information collections do not mandate the use of any official Government form. After OMB approves and combines the burden for both collections under a single collection (0579–0093), the Department will retire number 0579–0092.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(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 our 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.302547 hours per response.

Respondents: Dealers, exhibitors, research facilities, carriers, and intermediate handlers.

Estimated annual number of respondents: 11,687.

Estimated annual number of responses per respondent: 13.477881.

Estimated annual number of responses: 157,516.

Estimated total annual burden on respondents: 47,656 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22290 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0106]

A Business Plan To Advance Animal Disease Traceability; Final Version

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we are making available a final version of our Business Plan to Advance Animal Disease Traceability. Based on comments that we received on our draft Business Plan, which we made available to the public for review and comment through a previous notice, we have amended the plan in order to provide greater clarity regarding the points of integration between the National Animal Identification System (NAIS) and existing State and Federal animal health programs and brand programs. We have also added more specificity regarding traceability strategies for several animal industries, an explanation of how the NAIS can help producers meet country of origin labeling requirements, and a detailed discussion of future plans regarding radio frequency identification of animals destined for import or export. We have also updated the plan to reflect the current budget for the NAIS, to adjust the benchmarks and target dates for implementation of animal traceability, and to make other, nonsubstantive changes. The final Business Plan retains the seven core strategies for harmonizing the NAIS with existing programs and methods that we outlined in our draft plan.

ADDRESSES: The Business Plan is available on the Internet at *http://animalid.aphis.usda.gov/nais/*. The document may also be viewed 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.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Coordinator, National Animal Identification System, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that

will help producers and animal health officials respond quickly and effectively to animal disease events in the United States. The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after its discovery.

On December 19, 2007, we published in the **Federal Register** a notice [1] (Docket No. APHIS–2007–0148, 72 FR 71871–71873) in which we made available for review and comment a draft Business Plan to Advance Animal Disease Traceability. The Business Plan recommended seven strategies and options to enable existing State and Federal regulated and voluntary animal health programs, industry-administered management and marketing programs, and various identification methods to work in harmony with the NAIS, with the goal of creating a comprehensive animal-disease traceability infrastructure in order to facilitate 48-hour traceback.

We solicited comments on the draft Business Plan through the NAIS Web site (*http://animalid.aphis.usda.gov/nais/*) for 118 days, through April 15, 2008. We received 183 comments by that date, from national, regional, and State industry groups, State departments of agriculture, national veterinary organizations, the operator of a horse racetrack, manufacturers and distributors of animal identification devices, veterinarians, extension agents, university professors, producers, and private citizens. In response to the comments we received, we have modified the draft plan in several places:

- We now specify throughout the Business Plan that the long-term focus of the NAIS is full traceability within the cattle industries (both beef and dairy), based on the consistent recording of all animal movements. The draft Business Plan focused on implementing a ''book-end'' approach, based on knowledge of the premises of origin and the most recent premises for the animal, with fewer references to the recording of animal movements.
- We now specify throughout the Business Plan that, while all producers can benefit from choosing to participate in national animal health safeguarding efforts, NAIS standards apply to the administration of disease programs.
- We now separate out implementation strategies for the sheep industry from those for the goat industry to reflect that they are separate and distinct industries and species.
- We have added an explanation of how NAIS participation provides producers with options for meeting forthcoming country of origin labeling requirements.
- We now explain future plans for requiring radio frequency identification (commonly referred to as RFID) of animals destined for import and export when such animals are subject to individual identification.
- We have added a formal acknowledgement of the importance of official brands, and a clarification that the NAIS is not in conflict with, or a replacement for, existing brand programs.
- We have updated the budget for the NAIS to reflect the allocation for fiscal year 2008, have adjusted the benchmarks and timelines for implementation of animal traceability by species and for registration of critical location points, and have made other, nonsubstantive changes throughout the plan.

It is important to note, however, that the final version of the Business Plan retains the seven core strategies for harmonizing the NAIS with existing programs and methods that we outlined in our draft Business Plan.

We are making the final version of the Business Plan available on the NAIS Web site. Paper copies may be obtained by writing to the following address: NAIS Program Staff, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737.

Done in Washington, DC, this 17th day of September 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–22192 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0148.*

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft Environmental Impact Statement (Draft EIS) to evaluate the environmental impacts of authorizing Leavell-McCombs Joint Venture (LMJV) to access 287.5 acres of private property surrounded by National Forest System land. The Forest Service must provide adequate access for the reasonable use and enjoyment of private land. LMJV intends to construct a resort and other facilities known as the Village at Wolf Creek on their property, which lies entirely within the Wolf Creek Ski Area. An alternative that evaluates combining the access for both the Village at Wolf Creek and the Wolf Creek Ski Area into a single grade-separated interchange will be analyzed.

DATES: Comments concerning the scope of the analysis must be received by October 31, 2008. The draft EIS is expected May 2009; the final EIS is expected December 2009.

ADDRESSES: Send written comments to Wolf Creek Access EIS, C/O Content Analysis Group, 1584 South 500 West, Suite 202, Woods Cross, UT, 84010, or *wolfcreek@contentanalysisgroup.com*. Fax: 801–397–5628. Electronic copies of the scoping packet will be available on the World Wide Web at *http://www.fs.fed.us/r2/riogrande/projects/forcomment/index.shtml*.

FOR FURTHER INFORMATION CONTACT: Becky Bryan, Wolf Creek Access Project Leader, 401 Fairgrounds Road, Rolla, MO 65401.

SUPPLEMENTARY INFORMATION: LMJV acquired 300 acres surrounded by National Forest System lands within the Wolf Creek Ski Area (Ski Area) boundary in a land-for-land exchange with the Forest Service in 1987. Subsequently, LMJV transferred 12.5 acres of that parcel to the Wolf Creek Ski Corporation for the development of new ski lifts and ski trails. Mineral County Board of County Commissioners, the regulatory authority on private property development, approved LMJV's Final Planned Use Development (PUD) for a year-round resort village, known as the Village at Wolf Creek, on the remaining 287.5 acres in 2004. A lawsuit challenging the PUD resulted in the following court order: ''[We] conclude that [the state statute] requires at a minimum year-around wheeled vehicle access between State Highway 160 and the Village.'' *Wolf Creek Ski Corp.* v. *Board of County Com'rs of Mineral County*, 170 P.3d 821, 830 (Colo.App. 2007). The result of the state court litigation was to void the county approval of LMJV's PUD. While no PUD is currently in effect, the Forest Service takes note that the state court litigation upheld the PUD on all issues other than access.

In March 2006, Forest Supervisor Peter Clark (retired), of the Rio Grande National Forest (RGNF) signed a Record of Decision (ROD) and issued a Final Environmental Impact Statement (Final EIS) for the Application for the

Transportation and Utilities Systems and Facilities for the Village at Wolf Creek. A lawsuit was filed against the U.S. Forest Service, challenging the 2006 ROD and Final EIS. All parties involved reached a settlement agreement on February 19, 2008 to resolve the litigation in which the Forest Service agreed to withdraw the 2006 ROD and initiate a new scoping process and preparation of a new draft and final EIS in connection with LMJV's application. In June 2008, LMJV submitted an amended Application for Transportation and Utility Systems and Facilities on Federal Lands (application). This NOI initiates the new EIS preparation.

Purpose and Need for Action

The purpose of this action is to provide safe and efficient road access compatible with Ski Area operations to the private property surrounded by NFS lands. This action is needed to meet the mandate of the *Alaska National Interest Lands Conservation Act* (ANILCA) (Pub. L. 96–487) to provide access to private land. Section 1323(a) of ANILCA provides that the Forest Service must grant access across federal lands as the Forest Service deems adequate to secure the owners the reasonable use and enjoyment of their land, subject to Forest Service rules and regulations. However, the Forest Service does not have regulatory authority over the density of development on the private land and any parcel of private land surrounded by Forest Service land could have a range of reasonable uses. The Forest Service does not decide which use of the private property within the range of reasonable uses will be allowed. However, the Forest Service must provide access over National Forest System lands that are adequate to allow use and enjoyment of the private property within that range of reasonable uses.

A key purpose for the 1987 land exchange decision was to provide for private land to be developed for residential and commercial uses in a manner that would complement the ski area. Based on the previously referenced State of Colorado appellate court ruling, Mineral County could not approve subdivision of the Village property for purposes of residential and commercial development without ''year-around wheeled vehicle'' access. Therefore, the Forest Service concludes that ANILCA requires it to grant ''year-around wheeled vehicle access'' so that LMJV may use its property for residential and commercial purposes as contemplated by the 1987 land exchange. This conclusion does not prejudge the density of development that Mineral County may approve.

Proposed Action

The Proposed Action is to authorize the construction and use of a safe and efficient road, approximately 1,650 feet in length, across NFS land to provide ''year-around wheeled vehicle access'' to LMJV for their reasonable use and enjoyment of the property. The proposal includes authorization of rights-of-way adjacent to the access road for the installation of utilities to service the Village property.

Possible Alternatives

In addition to the Proposed Action and No Action Alternative, where the access road and Village at Wolf Creek would not be constructed, one alternative being considered would combine the LMJV Village at Wolf Creek access and Wolf Creek Ski Area access into one integrated access using a single grade-separated interchange access point from U.S. Highway 160.

Lead and Cooperating Agencies

The Forest Service is the lead agency. Cooperating agencies may include Colorado Department of Transportation (CDOT), Army Corps of Engineers (ACOE), Mineral County, U.S. Fish & Wildlife Service, Colorado Public Utilities Commission, Environmental Protection Agency, Colorado Division of Water Resources, Colorado Department of Health and Environmental Resources, and Colorado Water Conservation Board.

Responsible Official

Dan S. Dallas, Forest Supervisor of the Rio Grande National Forest, 1803 West Hwy 160, Monte Vista, CO 81144.

Nature of Decision To Be Made

Access must be granted to private inholdings in accordance with ANILCA, so the decision is not whether to grant access. The decisions to be made are: (1) The means, mode, and route of safe and efficient access across NFS lands that is adequate for the Applicant to exercise the reasonable use and enjoyment of the private property; and (2) whether to authorize rights-of-way for utility facilities across NFS lands, and if so, the location and specifications of such rights-of-way.

Open House Scoping Meetings

The public is invited to attend any of three open house scoping meetings to obtain more information and provide written comment about the project. Each open house scoping meeting will begin at 5 p.m. and end at 7:30 p.m. Dates and locations for the open house scoping meetings are:

October 7—Creede Mining Museum, 503 Forest Service Road 9, Creede, CO 81130.

October 8—Rio Grande County Annex, 965 6th St., Del Norte, CO 81132.

October 9—Pagosa Springs Community Building, 451 Hot Springs Blvd., Pagosa Springs, CO 81147.

Preliminary Issues

Preliminary issues, which will be refined from this public involvement and analysis process, include (1) Compatibility with the Wolf Creek Ski Area operations, (2) public safety associated with the traffic levels at U.S. Highway 160 intersection, (3) public access to Alberta Park Reservoir, and (4) potential impacts to wetlands and fens.

Permits or Licenses Required

LMJV will need to obtain a Highway Access Permit from Colorado Department of Transportation. LMJV may also need to obtain an individual 404 permit from the Army Corps of Engineers.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the proposed action should be as specific as possible. In addition, the Forest Service welcomes comments on the alternative of a single grade-separated interchange access point from U.S. Highway 160 for both the Wolf Creek Ski Area and Village at Wolf Creek.

Importance of Public Participation in This and Subsequent Environmental Review

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and

considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

Authority: 40 CFR 1501.7 and 1508.22, 36 CFR 220.5(b) and Forest Service Handbook 1909.15, Section 21.

Dated: September 11, 2008.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. E8–22150 Filed 9–22–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 4, 2008.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0219.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2008 the Department published a notice of initiation of the new shipper review of certain frozen warmwater shrimp from the Socialist Republic of Vietnam covering the period February 1, 2007 through January 1, 2008. *See Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 73 FR 18510 (April 4, 2008). The preliminary results of this new shipper review are currently due no later than September 22, 2008.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues regarding the use of an intermediate input methodology, potential affiliation issues, the examination of importer information and the evaluation of the *bona fide* nature of company sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 120 days, until no later than January 20, 2009. The final result continues to be due 90 days after the publication of the preliminary result.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: September 17, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–22289 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

NIST Blue Ribbon Commission on Management and Safety

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the NIST Blue Ribbon Commission on Management and Safety, National Institute of Standards and Technology (NIST) will meet Monday, October 6, from 9 a.m.–4 p.m., in the NIST laboratory in Boulder, CO. This notice is the second meeting of the Blue Ribbon Commission on Management and Safety.

The purpose of this meeting is to continue a high level review of NIST's management structure and systems as they relate to safety at the Institute. The Commission will ultimately provide consensus advice to the Department of Commerce on whether (a) The training, safety, security, and response protocols, (b) the implementation of those protocols and internal controls, and (c) the management structure at NIST are appropriate to ensure safe operations of all NIST programs. The agenda for this meeting will focus on NIST safety and management structure at the Boulder laboratories. The agenda may change to accommodate Commission business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/blueribbon/index.html.*

DATES: The meeting will convene on October 6, 2008 at 9 a.m., and will adjourn at 4 p.m.

ADDRESSES: The meeting will be held in Building 1, Room 1103/1105, at the National Institute of Standards and Technology, Boulder, Colorado 80305.

To enable NIST to make arrangements to admit visitors to the NIST campus, anyone wishing to attend this meeting should submit name, e-mail address and phone number to Mary Lou Norris (*marylou.norris@nist.gov*) no later than October 2, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Lou Norris, National Institute of Standards and Technology, Building 101, MS 1071, 100 Bureau Drive, Gaithersburg, MD 20899; telephone: (301) 975–2002; e-mail: *marylou.norris@nist.gov*.

Dated: September 18, 2008.

Patrick D. Gallagher,

Deputy Director.

[FR Doc. E8–22351 Filed 9–19–08; 11:15 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the Tourism alternate on its Sanctuary Advisory Council. Applicants chosen as the Tourism alternate should expect to serve until February 2011. Applicants are chosen based upon their particular expertise and experience in relation to the alternate position for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of

residence in the area affected by the Sanctuary.

DATES: Applications are due by October 24, 2008.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4206, or *Nicole.Capps@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus six local and State governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary), the Elkhorn Slough National Estuarine Research Reserve and the U.S. Coast Guard sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel (''RAP'') chaired by the Research Representative, the Sanctuary Education Panel (''SEP'') chaired by the Education Representative, the Conservation Working Group (''CWG'') chaired by the Conservation Representative, and the Business and Tourism Activity Panel (''BTAP'') co-chaired by the Business/Industry and Tourism Representatives, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 11, 2008.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E8–22059 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK66

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Law Enforcement Advisory Panel (LEAP).

DATES: The meeting will convene at 1:30 p.m. on Tuesday, October 14, 2008 and conclude no later than 5 p.m.

ADDRESSES: The meeting will be held at the Key Largo Grand Resort & Beach Club, A Hilton Resort, 97000 S. Overseas Hwy., Key Largo, FL 33037.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Interim Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene the Law Enforcement Advisory Panel (LEAP) to discuss the Marine Recreational Information Program's (MRIP) Angler Registry, enforcement costs associated with marine aquaculture, the Council's Statement of Organization Practices and Procedures (SOPPs). The LEAP will review Draft Amendment 29 to the Reef Fish Fishery Management Plan (FMP) that proposes a grouper/tilefish individual fishing quota (IFQ) program, and approve revised Strategic and Operations plans. Finally, the LEAP will review the status of FMP amendments and other regulatory actions since the last LEAP meeting. The LEAP will also discuss Amendment 30B.

The LEAP consists of principal law enforcement officers in each of the Gulf States, as well as the National Oceanic and Atmospheric Administration (NOAA) Law Enforcement, U.S. Fish and Wildlife Service (FWS), the U.S. Coast Guard, and the NOAA General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the LEAP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) 5 working days prior to the meeting.

Dated: September 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22165 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK64

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting, on October 7–9, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, October 7 beginning at 9 a.m., and Wednesday and Thursday, October 8 and 9, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, October 7, 2008

Following introductions and any announcements, the Council will receive a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, NOAA Enforcement and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission. Following these reports, there will be an open comment period during which any interested party may address the Council about fishery management related issues that are otherwise not listed on the agenda. NMFS staff from Silver Spring, MD will hold a scoping session on Amendment 3 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan, an action that will focus on small coastal shark issues. Prior to a lunch break the Council will discuss the most recent International Commission for the Conservation of Atlantic Tunas Advisory Panel meeting and consider recommendations for bluefin tuna management. The Council's Scientific and Statistical Committee will review its priority and workload issues, discuss its comments on the scientific basis for Amendment 3 to the Skate Fishery Management Plan (FMP), provide comments on the new scallop overfishing definition under consideration for use in Framework Adjustment 15 to the Scallop FMP and provide feedback on the utility of a report on NEFMC documents used in sea scallop management. As the final agenda item of the day, the Sea Scallop Committee will review its discussions about updated biomass estimates provided by the Scallop Plan Development Team for the Elephant Trunk and Delmarva access areas. It is not necessary for the Council to take action at the meeting, however, given that if biomass estimates fall below defined thresholds, NMFS already has the authority to reduce the number of allowed trips in the areas. That authority was provided by the Council in Framework Adjustment 19 to the Scallop FMP. If appropriate, the Council also may discuss and approve a response to the most recent NMFS Biological Opinion for the Scallop FMP. The agency is requesting that the Council further develop one of several management measures outlined in the Opinion to minimize the impacts of sea turtle incidental takes in the fishery and include the action in an upcoming adjustment to the Scallop FMP.

Wednesday, October 8, 2008

The Council will review the progress of its Herring Committee to develop management alternatives for Amendment 4 to the Herring FMP. Committee recommendations include but are not limited to a catch monitoring program for the fishery, management measures to address herring bycatch concerns in the Atlantic mackerel fishery, annual catch limits, accountability measures and individual as well as group quota allocation programs. The Council also will approve recommendations for cooperative research priorities for the 2010 herring research set-aside program. Following a lunch break the NEFMC will take initial action on Framework Adjustment 2 to the Spiny Dogfish FMP. The action will allow consideration of alternatives to adjust stock status determination criteria. The Council also will briefly review any experimental fishery permits requests published since the last Council meeting and possibly offer comments.

NMFS will then review the final Marine Protected Area Framework and proposed nomination process. This item will be followed by discussion and approval of Council comments on the August 26, 2008 Advanced Notice of Proposed Rulemaking concerning consultations pursuant to the National Marine Sanctuary Act. As the last item of the day, the Transboundary Management Guidance Committee will ask the Council to review and approve its recommendations for total allowable catches for eastern Georges Bank cod and haddock and Georges Bank yellowtail flounder for the 2009 fishing year.

Thursday, October 9, 2008

The Council will continue development of Northeast Multispecies FMP Amendment 16 measures, receive reports from its Groundfish and Recreational Advisory Panels, review projections for newly overfished stocks, identify rebuilding strategies and approve a revised timeline for development of the amendment. This agenda item will be discussed until the Council addresses any other outstanding business and adjourns.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22163 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK65

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Allocation Committee (GAC) will a hold working meeting, which is open to the public.

DATES: The GAC will meet Wednesday, October 8, 2008, from 8 a.m. until business for the day is completed, and reconvene on Thursday, October 9, at 8 a.m. and continue until business for the day is completed.

ADDRESSES: The GAC meeting will be held at the Residence Inn Portland Downtown at Riverplace, Broadway Room, 2115 SW River Parkway, Portland, OR 97201; telephone: (503) 552–9500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop recommendations to the Council for a preferred trawl rationalization alternative, on which the Council is scheduled to take its final action at the November 2008 Council meeting.

Although non-emergency issues not contained in the meeting agenda may come before the Groundfish Allocation Committee (GAC) for discussion, those issues may not be the subject of formal GAC action during this meeting. GAC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22164 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK70

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 143rd meeting to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 143rd Council meeting and public hearings will be held on October 14–17, 2008 in Honolulu, Hawaii. For specific times and the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 143rd Council meeting and public hearings will be held at the Pagoda Hotel, 1525 Rycroft Street, Honolulu, Hawaii, 96814; telephone: 808–941–6611.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Tuesday October 14, 2008

Standing Committee Meetings

1. 8:00 a.m.–10:00 a.m. Executive and Budget Standing Committee
2. 10:00 a.m.–12:00 noon Program Planning Standing Committee
3. 1:30 p.m.–2:30 p.m. Fishery Rights of Indigenous People Standing Committee
4. 2:30 p.m.–4:30 p.m. Pelagics Ecosystem and International Fisheries Standing Committee
5. 4:30 p.m.–6:30 p.m. Hawaii Archipelago/Pacific Remote Island Areas (PRIA) Standing Committee

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

9:00 a.m. 5:30 p.m. Wednesday October 15, 2008

1. Introductions
2. New Council Members Oath of Office
3. Approval of Agenda
4. Approval of 142nd Meeting Minutes
5. Agency Reports
A. National Marine Fisheries Service (NMFS)
1. Pacific Islands Regional Office (PIRO)
2. Pacific Islands Fisheries Science Center (PIFSC)
B. NOAA General Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NOAA Office for Law Enforcement
3. Status of Violations
6. Program Planning
A. Program Planning and Research
1. Annual Catch Limits
2. Small-scale and Traditional Fisheries
3. Council's Five-Year Research Plan
B. Update on Marine Recreational Information Program (MRIP) and National Saltwater Angler Registry
C. National Eco-labeling Initiative
D. Update on Legislation
E. Update on Status of Fishery Management Plan (FMP) actions
F. Community Development Program Amendment Status
G. Coral Reefs
1. Report on U.S. Coral Reef Task Force Meeting
2. Coral Reef Program Review
H. Marine Education and Training Program Selection Process
I. Update on Blue Legacy
J. Social Science Research Planning Committee Report
K. Scientific and Statistical Committee (SSC) Recommendations
L. Standing Committee Recommendations
M. Public Hearing
N. Council Discussion and Action
7. Public Comment on Non-agenda Items

6:00 p.m.–9:00 p.m. Wednesday October 15, 2008

Fishers Forum

I. Welcome and Introductions
II. Richard Shiroma Award Presentation
III. Assessing Historical Changes in the Hawaii Bottomfish Fishery and their Effect on Calculating Catch Per Unit Effort (CPUE)
IV. 2008 Hawaii Bottomfish Stock Assessment

V. Alternatives for Bottomfish Total Allowable Catch (TAC)
VI. Public Hearing

9:00 a.m.–6:00 p.m. Thursday October 16, 2008

8. Hawaii Archipelago and PRIA
A. Moku Pepa
B. Enforcement Issues
C. Hawaii Community Issues
1. Humpback Whale Sanctuary Update
2. Monk Seal Critical Habitat in the Main Hawaiian Islands (MHI)
3. West Hawaii Fisheries Council
4. Aha Kiole Community Consultation Process
5. Green Sea Turtle Biological and Genetic Information/Classification as Distinct Population Segment
6. Other Issues
D. Main Hawaiian Islands Bottomfish
1. CPUE Workshop Report
2. Stock Assessment
3. Recommendation on Total Allowable Catch for 2008/2009 Fishing Season
E. Aquaculture Issues
1. Development of Projects in Hawaii
2. Expansion of Current Aquaculture Projects on Oahu
F. Coral Reef Annual Report Status
G. Education and Outreach Initiatives
H. Hawaii Regional Ecosystem Advisory Committee (REAC) Report
I. SSC Recommendations
J. Standing Committee Recommendations
K. Public Hearing
L. Council Discussion and Action
9. Marianas Archipelago
A. Arongo Falew and Isla Informe
1. Commonwealth of the Northern Marianas Islands (CNMI)
2. Guam
B. Enforcement Issues
1. CNMI
2. Guam
C. Marianas Community Issues
1. Marianas Training Range Complex
2. Lunar Calendar Workshop
3. Report on Guam Mayors' Meeting
4. Report on Guam Village Meetings
5. Guam Indigenous Fishing Rights Legislation
6. CNMI Nearshore Fishery Regulations
7. Other Issues
D. Marine Conservation Plans
1. CNMI
2. Guam
E. Education and Outreach Initiatives
F. Report on Marianas Plan Team Meeting
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action
10. American Samoa Archipelago
A. Motu Lipoti
B. Enforcement Issues
C. American Samoa Community Issues
1. American Samoa Fishery Development
2. Sale of Tuna Cannery
3. Rose Atoll Management
4. Other Issues
D. Education and Outreach Initiatives
E. Report on American Samoa Advisory Panel Meeting
F. Report on American Samoa Plan Team Meeting
G. SSC Recommendations
H. Public Comment
I. Council Discussion and Action

9:00 a.m. 5:00 p.m. Friday October 17, 2008

11. Pelagic & International Fisheries
A. Pelagics Ecosystem
1. Hawaii Shallow-set Longline Fishery Management
a. NMFS Biological Opinion
b. Draft Supplemental Environmental Impact Statement (DSEIS) Public Comments
2. Fish Aggregating Device (FAD)Fishery Management
3. American Samoa Longline Fishery Management
a. Recommendation on Management Measures to Minimize Turtle Interactions
b. Report of Public Meetings
c. NMFS Biological Opinion
4. Pelagics Fishery Management Plan Vessel Marking Regulations
B. American Samoa and Hawaii Longline Quarterly Reports
C. American Samoa Longline Logbook/Observer Data Analysis
D. International Fisheries
1. Western and Central Pacific Fisheries Commission (WCPFC)
a. Science Committee
b. U.S. Advisory Committee
c. Northern Committee
d. Technical & Compliance Committee
e. Update on WCPFC Rulemaking
2. Inter-American Tropical Tuna Commission (IATTC)
E. SSC Recommendations
F. Standing Committee Recommendations
G. Public Hearing
H. Council Discussion and Action
12. Administrative Matters & Budget
A. Financial Reports
B. Administrative Reports
C. Meetings and Workshops (Calendar)
D. Council Family Changes
E. Standard Operating Procedures and Protocols (SOPP)
1. Status of NMFS SOPP Review
2. Report on Internal Control Review
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
13. Other Business
A. Election of Officers
B. Next Meeting

Non-Emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 143rd meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 18, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–22184 Filed 9–22–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Preservation of Continuity for Semi-Codeless GPS Applications

AGENCY: Assistant Secretary of Defense for Networks and Information Integration/DoD Chief Information Officer, Department of Defense.

ACTION: Notice.

SUMMARY: To enable an orderly and systematic transition, the U.S. Government has established December 31, 2020 as the date by which users of semi-codeless/codeless receiving equipment are expected to transition to using GPS civil-coded signals. Based on the current launch schedule and projected budget, the December 31, 2020 transition date represents the planned availability of the second and third coded civil GPS signals being broadcast from a minimum of 24 GPS satellites. Department of Defense will reassess the transition date should significant GPS program delays arise.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Swider, 703–607–1122.

SUPPLEMENTARY INFORMATION:

The Department of Defense (DoD) provides the GPS Standard Positioning Service (SPS) for peaceful civil, commercial, and scientific uses on a continuous worldwide basis free of direct user fees. The SPS is a single-frequency GPS service which is presently limited to the coarse acquisition (C/A) code on the L1 frequency.

Access to two or more civil signals are needed to enable high accuracy civil applications. Civil users are currently employing codeless or semi-codeless techniques to gain access to encrypted GPS signals, L1 P(Y) and L2 P(Y). To facilitate expansion of civil GPS applications, the DoD has planned and begun to broadcast additional civil signals that will obviate the further need for use of codeless and semi-codeless techniques. The second coded civil GPS signal (L2C) and the third coded civil GPS signal (L5) are planned to be broadcast from 24 GPS satellites in 2016 and 2018, respectively. Full operational capability of the L2C and L5 GPS signals in combination with the existing L1 C/A signal will enable the full spectrum of dual frequency applications without using the P(Y) signals.

The U.S. Government acknowledges global use of GPS codeless and semi-codeless techniques and commits to maintaining the existing GPS L1 C/A, L1 P(Y), L2C and L2 P(Y) signal characteristics until December 31, 2020 when the second and third civil signals (L2C and L5) are planned to be broadcast from a minimum of 24 GPS satellites. After the planned transition date, the characteristics of the L1 P(Y) and L2 P(Y) signals transmitted by any or all GPS satellites broadcasting two or more civil-coded signals may change without further notice and may preclude the use of P(Y) coded signals for high accuracy applications.

The U.S. Government is committed to support civil PNT services based on GPS civil signals: L1 C/A, L2C, L5, and L1C. To this end, GPS civil signal characteristics are specified in the relevant Interface Specifications (ISs) and will be included in Performance Standards (PSs) subject to the operating descriptions contained in the Federal Radionavigation Plan (FRP). The U.S. Government has met or exceeded GPS service performance commitments in the Standard Positioning Service Performance Standard since 1993 and is committed to continually improving GPS services as codeless and semi-codeless users complete a timely transition to dual-coded civil GPS equipment.

Dated: September 16, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–22197 Filed 9–22–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, October 7, 2008 8 a.m.–5 p.m.

Opportunities for public participation will be held on Tuesday, October 7, 2008, from 1 p.m. to 1:15 p.m. and from 3:15 p.m. to 3:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Coeur d'Alene Hampton Inn, 1500 Riverstone Drive, Coeur d'Alene, Idaho 83814.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Progress to Cleanup.
- Advanced Mix Waste Treatment Plant—Performance Status Review.
- Waste Area Group 7 (WAG–7) Final Record of Decision.
- Implementation of Buried Waste Agreement.
- WAG–10 Proposed Plan.
- Preparation to Process Offsite-Generated Waste.
- Fiscal Year 2009 EM Idaho Cleanup Project Budget.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC, on September 18, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–22214 Filed 9–22–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2244–022]

Energy Northwest; Notice of Application Accepted for Filing, and Soliciting Motions To Intervene

September 16, 2008.

Take notice that we are soliciting motions to intervene for the Packwood Lake Hydroelectric Project application. Notice of the Application's tendering was issued on March 7, 2008. The Commission accepted the application and deemed the application ready for environmental analysis by public notice on June 19, 2008, and solicited comments, recommendations, terms and conditions, and prescriptions. We are now soliciting motions to intervene. The application, associated filings and issuances are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2244–022.

c. *Date filed:* February 25, 2008.

d. *Applicant:* Energy Northwest.

e. *Name of Project:* Packwood Lake Hydroelectric Project.

f. *Location:* The existing project is on Lake Creek, a tributary to Cowlitz River, in Lewis County in southwestern Washington near the unincorporated town of Packwood. The upper portion of the lake lies within the Goat Rocks Wilderness Area. The project occupies 511.65 acres of United States Forest Service land, 23.66 acres of Energy Northwest-owned land, 8.78 acres of Washington State lands, and 1.52 acres of Lewis County Public Utility District lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C.791 (a)—825(r).

h. *Applicant Contact:* Jack W. Baker, Vice President, Energy Northwest, Mail Drop 1035, P.O. Box 968, Richland, WA 99352–0968; telephone (509) 377–5078, or e-mail at *jwbaker@energy-northwest.com*; or D.L. Ross, Energy Northwest, Mail Drop 1030, P.O. Box 968, Richland, WA 99352–0968.

i. *FERC Contact:* Kenneth Hogan, telephone (202) 502–8464, or e-mail at *kenneth.hogan@ferc.gov*.

j. Deadline for filing motions to intervene is 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, as of February 25, 2008.

l. *Project description:* The existing project consists of the following: (1) An intake canal, a concrete drop structure (dam), intake building on Lake Creek located about 424 feet downstream from the outlet of Packwood Lake, a 21,691-foot system of concrete pipe and tunnels, a 5,621-foot penstock, a surge tank, and a powerhouse with a 26.1-megawatt turbine generator; (2) a 452-acre reservoir (Packwood Lake) at a normal full pool elevation of 2,857 feet above mean sea level with approximately 4,162 acre-feet of usable storage; and (3) appurtenant facilities. The average annual generation at the project is about 90,998 megawatt-hours.

The applicant proposes a modified reservoir operational regime and higher instream flow releases to the bypassed reach on Lake Creek. Several other proposed measures for the project include: (1) Developing and implementing a stream restoration and enhancement plan in the anadromous zone in lower Lake Creek; (2) improving fish passage on Snyder Creek where it crosses the tailrace canal; (3) maintaining and monitoring of tailrace fish barrier; and (4) developing and implementing numerous resource protection and enhancement plans.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary link''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22160 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

September 17, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–481–001.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Substitute Fourth Revised Sheet 240 to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 09/01/2008.

Filed Date: 09/11/2008.

Accession Number: 20080912–0081.

Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Docket Numbers: RP08–621–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Eighteenth Revised Sheet No. 17, *et al.*, to FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective 10/01/2008.

Filed Date: 09/15/2008.

Accession Number: 20080917–0122.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: RP08–622–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits First Revised Sheet No. 229, *et al.*, to FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective 11/01/2008.

Filed Date: 09/15/2008.

Accession Number: 20080917–0123.

Comment Date: 5 p.m. Eastern Time Monday, September 29, 2008.

Docket Numbers: CP06–76–003.

Applicants: Algonquin Gas Transmission LLC.

Description: Algonquin Gas Transmission LLC submits an application for amendment to certificate of public convenience and necessity and request for expedited treatment.

Filed Date: 09/10/2008.

Accession Number: 20080916–0030.

Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene

again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–22140 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[ER96–1361–013 etc.]

Atlantic City Electric Company et al.; Notice of Filing

September 16, 2008.

	Docket Nos.
Atlantic City Electric Company	ER96–1361–013
Delmarva Power & Light Company	ER99–2781–011
Potomac Electric Power Company	ER98–4138–009
Conectiv Energy Supply, Inc.	ER00–1770–019
Conectiv Atlantic Generation, LLC.	
Conectiv Delmarva Generation, LLC.	
Conectiv Bethlehem, LLC	ER02–453–010
Pepco Energy Services, Inc.	ER98–3096–015
Bethlehem Renewable Energy, LLC	ER07–903–002
Eastern Landfill Gas, LLC	ER05–1054–003
Potomac Power Resources, LLC	ER01–202–008
Fauquier Landfill Gas, LLC	ER04–472–007

Notice of Filing

Take notice that on April 8, 2008, Pepco Holdings, Inc on behalf of its affiliates Atlantic City Electric Company, Delmarva Power & Light Company, Potomac Electric Power Company, Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva Generation, LLC, Conectiv Bethlehem, LLC, Pepco Energy Services, Inc., Bethlehem Renewable Energy, LLC, Eastern Landfill Gas, LLC, Potomac Power Resources, LLC, and Fauquier Landfill Gas, LLC filed market-based tariff revisions in response to the Commission's informal data request issued on April 4, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22159 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–2011–000]

Bonneville Power Administration; Notice of Filing

September 16, 2008.

Take notice that on September 12, 2008, Bonneville Power Administration filed an errata correcting its July 14, 2008, 2008 Average System Cost Methodology.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, September 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22162 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RR06–1–017; RR07–1–004; RR07–2–004; RR07–3–005; RR07–4–004; RR07–5–005; RR07–6–004; RR07–7–004; RR07–8–005]

North American Electric Reliability Corporation; Notice of Filing

September 16, 2008.

Take notice that on September 15, 2008, North American Electric Reliability Corporation filed supplemental information to its July 21, 2008, compliance filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22157 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1282–001]

Pacific Gas and Electric Company; Notice of Filing

September 16, 2008.

Take notice that on September 11, 2008, Pacific Gas and Electric Company filed an errata to its July 21, 2008, Annual Adjustment to Interruptible Transmission Service Rate for Sacramento Municipal Utility District.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 23, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22158 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–205–028]

Xcel Energy Services, Inc.; Notice of Filing

September 16, 2008.

Take notice that on August 27, 2008, Xcel Energy Services, Inc., filed revised market-based rate tariff sheets pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 26, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–22161 Filed 9–22–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2004–0023; FRL–8718–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Health Effects of Microbial Pathogens in Recreational Waters: National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal); EPA ICR No. 2081.04, OMB Control No. 2080–0068

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 renew an existing approved collection. 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 23, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–ORD–2004–0023, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *ord.docket@epa.gov*, or by mail to: EPA Docket Center, ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 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: Elizabeth Sams, Environmental Protection Agency, Office of Research and Development, National Health and Environmental Effects Research Laboratory, Human Studies Division, Epidemiology and Biomarkers Branch, MD 58–C, 109 T.W. Alexander Dr., Research Triangle Park, North Carolina 27711; telephone number: 919–843–3161; fax number: 919–966–0655; e-mail address: *sams.elizabeth@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 14, 2008 (73 *FR* 27818) EPA sought comments on this ICR pursuant to 5 CFR 1320.8 (d). EPA received no comments during the comment period. 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–ORD–2004–0023, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Research and Development 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 8:30 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 ORD Docket is 202–566–1752.

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 public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document. Please note that the 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: Health Effects of Microbial Pathogens in Recreational Waters: National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal).

ICR numbers: EPA ICR No. 2081.04, OMB Control No. 2080–0068.

ICR Status: This ICR is currently scheduled to expire on September 30, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor, the collection of information while this submission is pending at OMB. 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 title 40 of the CFR part 9, 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 purpose of this study is to examine the health effects associated with swimming exposure at beach sites designated as recreational areas. This study will be conducted, and the information collected, by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development (ORD), U.S. Environmental Protection Agency (EPA). Participation of adults and children in this collection of information is strictly voluntary. The identity of all participants is considered strictly confidential; thus, all data collected are stored without identifiers. This information is being collected as part of a research program consistent with the Section 3(a)(v)(1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development and the Office of Water entitled ''Action Plan for Beaches and Recreational Water'' available at *http://www.epa.gov/ord/htm/documents/600r98079.pdf*. The Beaches Act and ORD's strategic plan has identified research on effects of microbial pathogens in recreational waters as a high-priority research area with particular emphasis on developing new water quality indicator guidelines for recreational waters. The EPA has broad legislative authority to establish water quality criteria and to conduct research to support these criteria. This

data collection is for a series of epidemiological studies to evaluate exposure to and effects of microbial pathogens in marine and fresh recreational waters as part of the EPA's research program on exposure and health effects of microbial pathogens in recreational waters. Health effects data collection was previously conducted in a pilot study, four freshwater coastal sites, and three marine sites under OMB number 2080–0068. The results will be used to help inform the development of new national water quality and monitoring guidelines. The questionnaire health data will be compared with routinely collected water quality measurements. The analysis will focus on determining whether any water quality parameters are associated with increased prevalence of swimming-related health effects.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.25 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.

The annual public reporting and record keeping burden for this collection of information is estimated to average about fifteen minutes per response. If a single household participant completes all three interviews of the data collection, a total 45 minutes is used.

The interview process consists of three interviews; Two Beach Interviews & one Telephone Follow-up: Based on consultation with the individuals listed in Section 3(c) of the ICR, and our experience with similar types of information collection, we estimate that each family will spend an average of 30 minutes completing the beach interview and will require no record keeping. This includes the time for reviewing the information pamphlet and answering the questions. We estimate that each family spends an average of 15 minutes completing the home telephone interview. The telephone interviews will require no record keeping.

All human health data collection will be recorded utilizing computer-assisted personal interviews (CAPI). The telephone interview incorporates the same concept of direct data collection in a desk personal computer (PC) setting. The tablet notebooks and desk PCs are used by interviewers to collect human health data. Screens on these tablets and PCs only display current activated questions. All human health data is stored in secured locations to maintain confidentiality.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Respondents/Affected Entities: Individuals frequenting fresh and marine water beaches in the United States and territories.

Estimated Number of Respondents: 21,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 15,750.

Estimated Total Annual Cost: $236,250. This includes an estimated burden cost of $0 and an estimated cost of $0 for capital investment or maintenance and operational costs.

Changes in the Estimates: There is an increase of 10,500 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase is required to provide the science necessary to help inform the development of new public health standards for recreational water.

Dated: September 16, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–22204 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA–2008–0701; FRL–8718–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by EPA for Economics Projects (Renewal); EPA ICR No. 2205.02, OMB Control No. 2090–0028

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 24, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OA–2008–0701, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744
- *Mail:* Office of Environmental Information, Environmental Protection Agency, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OA–2008–0701. 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 *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*.

FOR FURTHER INFORMATION CONTACT:

Nathalie Simon, Office of Policy Economics and Innovation, (MC 1809T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2347; fax number: 202–566–2363; e-mail address: *simon.nathalie@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OA–2008–0701 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information (OEI) 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 OEI Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA EPA-HQ-OA–2008–0701

Affected entities: Entities potentially affected by this action are members of the general public, although the target population for the focus group discussions will vary by project.

Title: Focus Groups as used by EPA for Economics Projects (Renewal).

ICR numbers: EPA ICR No. 2205.02, OMB Control No. 2090–0028.

ICR status: This ICR is currently scheduled to expire on November 30, 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, 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 Environmental Protection Agency (EPA) is seeking renewal of a generic information collection request (ICR) for the conduct of focus groups and protocol interviews (hereafter jointly referred to as focus groups) related to economics projects. Over the next three years, the Agency anticipates embarking on a number of survey development efforts associated with a variety of economics projects including those related to valuation of ecosystems, children's health risks, improvements to coastal waters, and invasive species to name a few. Focus groups are an important part of any survey development process, allowing researchers to directly gauge what specific issues are important to the public and providing a means for explicitly testing draft survey materials. Through these focus groups, the Agency will be able to gain a more in-depth understanding of the public's attitudes, beliefs, motivations and feelings regarding specific issues and will provide valuable information regarding the quality of draft survey instruments.

The information collected in the focus groups will be used to develop and improve economics-related surveys. To the extent that these surveys are ultimately successfully administered, they will serve to expand the Agencies understanding of benefits and costs of a variety of actions and could provide the means to quantitatively assess the effects of others. Participation in the focus groups will be voluntary and the identity of the participants will be kept confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.4 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1758.

Frequency of response: Once.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: $30,147.

Estimated total annual costs: $30,147. This includes estimated burden costs only as there are no capital costs or operating and maintenance costs associated with this collection of information.

Are There Changes in the Estimates From the Last Approval?

Burden estimates included here are based on the supporting statement submitted for the original, approved ICR. Burden estimates will be revised to reflect new information and will be made available for public comment at the time the ICR is submitted to OMB for approval.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 15, 2008.

Brett R. Snyder,

Acting Director, National Center for Environmental Economics.

[FR Doc. E8–22243 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0244; FRL–8718–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management Programs (Renewal); EPA ICR No. 0969.08, OMB Control No. 2050–0041

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 renew an existing approved collection. 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 23, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0244, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov*, or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, 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: Kathy Rafferty, Office of Solid Waste (mail code 5303P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0589; fax number: 703–308–8617; e-mail address: *rafferty.kathy@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 6, 2008 (73 FR 24976), 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–RCRA–2008–0244, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) 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 8:30 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 RCRA Docket is (202) 566–0270.

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: Final Authorization for Hazardous Waste Management Programs (Renewal).

ICR numbers: EPA ICR No. 0969.08, OMB Control No. 2050–0041.

ICR status: This ICR is currently scheduled to expire on September 30, 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, 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: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of § 3006 of the Resource Conservation and Recovery Act (RCRA). A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by 40 CFR 271.23. Further, EPA may withdraw a State's authorized program under 40 CFR 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's

statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with 40 CFR 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with 40 CFR 271.21 and submit revised organizational charts as required under 40 CFR 271.6, in accordance with 40 CFR 271.21. These paperwork requirements are mandatory under § 3006(a) of RCRA. EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization.

Burden Statement: EPA does not expect any States to develop a program application or to submit a base program application over the three year period covered in this ICR. For a State submitting a revised program to EPA, the reporting burden is estimated to be 1,009 hours per year, with no associated recordkeeping burden. For a State whose program is being withdrawn, the reporting burden is estimated to average 207 hours, with no associated recordkeeping burden. EPA, however, does not expect that any State program will be withdrawn during the next three years.

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: State governments.

Estimated Number of Respondents: 58.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 19,968.

Estimated Total Annual Cost: $658,454, which includes $658,454 annualized labor costs and $0 annualized capital or O&M costs.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 16, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–22203 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0246; FRL–8718–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; NESHAP for Hazardous Waste Combustors (Renewal), EPA ICR Number 1773.09, OMB Control Number 2050–0171

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 renew an existing approved collection. 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 23, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0246, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Air and Radiation Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, 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: Shiva Garg, Office of Solid Waste (mail code 5302P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8459; fax number: 703–308–8433; e-mail address: *garg.shiva@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 6, 2008 (73 FR 24977), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. 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–2008–0246, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 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 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 *http://www.regulations.gov*.

Title: NESHAP for Hazardous Waste Combustors (Renewal).

ICR numbers: EPA ICR No. 1773.09, OMB Control No. 2050–0171.

ICR Status: This ICR is scheduled to expire on September 30, 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, 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: EPA, under authority of section 112d of the Clean Air Act, established National Emission Standards for Hazardous Air Pollutants (NESHAPs) for hazardous waste combustors: hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. These NESHAPs are found in 40 CFR part 63, subpart EEE. Under these standards, hazardous waste combustors are required to meet emission levels that reflect the maximum achievable control technology.

Subpart EEE of 40 CFR part 63 requires hazardous waste combustors to perform testing and monitoring and submit various reports and perform recordkeeping activities in order to demonstrate compliance with emission standards. Much of the information is kept on-site at the facilities; some is also submitted to the EPA or the delegated state agency. Facilities and EPA use the data to ensure compliance with Maximum Achievable Control Technology (MACT) standards.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 52 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: Business or other for-profit, and State, Local, or Tribal governments.

Estimated Number of Respondents: 289.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 199,897.

Estimated Total Annual Cost: $21,696,865, includes $16,010,727 for annualized labor cost, and $5,686,138 in annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1,630 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the fact that most sources have completed several actions involving one-time costs, such as initial notification, notice of the intent to comply, as well as public meetings related to these actions.

Dated: September 16, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–22202 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0374; FRL–8718–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Primary and Secondary Emissions From Basic Oxygen Furnaces (Renewal), EPA ICR Number 1069.09, OMB Control Number 2060–0029

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 23, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0374, 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: Sounjay Gairola, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4003; e-mail address: *gairola.sounjay@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–2008–0374, which is available for public viewing either online at *http://www.regulations.gov*, or 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 either 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 Primary and Secondary Emissions from Basic Oxygen Furnaces (Renewal).

ICR Numbers: EPA ICR Number 1069.09, OMB Control Number 2060–0029.

ICR Status: This ICR is scheduled to expire on November 30, 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 Primary and Secondary Emissions from Basic Oxygen Furnaces (40 CFR part 60, subparts N and Na) were promulgated on July 25, 1977 and January 2, 1986, respectively. These rules apply to Basic Oxygen Process Furnaces (BOPFs) in iron and steel plants commencing construction, modification or reconstruction after June 11, 1973 (NSPS subpart N) and top-blown BOPFs, hot metal transfer stations or skimming stations for which construction, reconstruction, or modification commenced after January 20, 1983 (NSPS subpart Na).

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 158 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: Facilities with basic oxygen furnaces.

Estimated Number of Respondents: 5.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,896.

Estimated Total Annual Cost: $179,440, which is comprised of $8,397 in O&M costs, $153,043 in labor costs, and $18,000 in annualized capital/startup costs.

Changes in the Estimates: There is no change in the labor hours to the respondents 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 respondents is either very low, or negative, or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. There is a minor change to the cost figures, since the previous ICR rounded to the nearest $1,000; this ICR presents cost figures which differ by $397 from the previous ICR due to using exact figures instead of rounding.

Dated: September 16, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–22201 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8718–5]

Science Advisory Board Staff Office; Science Advisory Board (SAB); Notification of a Public Advisory Committee Meeting and Three Teleconferences of the Integrated Nitrogen Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the Science Advisory Board's (SAB's) Integrated Nitrogen Committee (INC) and three subsequent public teleconference of the INC.

DATES: INC will meet from 8:30 a.m. on Monday, October 20 through 12:30 p.m. on Wednesday, October 22, 2008. The teleconferences will be held December 8, 9, and 10, 2008 from 2 p.m. to 5 p.m. All times are given in Eastern Time.

Location: The October 20–22, 2008 public meeting will take place at the Renaissance—M Street Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037, telephone: (202) 775–0800. The December 8, 9, and 10, 2008 public teleconferences will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the October 20–22, 2008 meeting or on the teleconferences December 8, 9, and 10, 2008 may contact Ms. Kathleen White, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9878; fax: (202) 233–0643; or e-mail at *white.kathleen@epa.gov*. General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/SAB.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB Integrated Nitrogen Committee is studying the need for integrated research and strategies to reduce reactive nitrogen in the environment. At the global scale, reactive nitrogen from human activities now exceeds that produced by natural terrestrial ecosystems. Reactive nitrogen both benefits and impacts the health and welfare of people and ecosystems. Scientific information suggests that reactive nitrogen is accumulating in the environment and that nitrogen cycling through biogeochemical pathways has a variety of consequences. Research suggests that the management of reactive nitrogen should be viewed from a systems perspective and integrated across environmental media. Accordingly, linkages between reactive nitrogen induced environmental and human health effects need to be understood to optimize reactive nitrogen research and risk management strategies. Information on the Committee's previous meetings was

published on January 17, 2007 (72 FR 1989), March 22, 2007 (72 FR 3492), August 14, 2007 (72 FR 4542), November 20, 2007 (72 FR 65340) and March 19, 2008 (73 FR 4802). The information is also available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Nitrogen%20Project*.

At the October 20–22, 2008 public meeting, the INC will: (1) Present its preliminary findings and recommendations; (2) engage with invited participants in breakout groups to get their input on the preliminary recommendations relating to integrated risk reduction for nitrogen; and (3) consider how to incorporate the input received as the Committee prepares its advisory report for EPA.

The purpose of the subsequent teleconferences of December 8, 9, and 10 is for the committee to discuss its revised draft report.

Availability of Meeting Materials: As they become available, the agenda and materials for this meeting will be posted on the SAB Web site prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* Speakers who wish to be placed on the public speaker list for the morning of October 22, 2008 meeting should notify Ms. Kathleen White, DFO, by e-mail no later than October 6, 2008. Oral presentations will be limited to one hour for all speakers. To be placed on the public speaker list for the December 8, 9, and 10, 2008 teleconferences, interested parties should notify Ms. Kathleen White, DFO, by e-mail no later than December 1, 2008. Oral presentations will be limited to a total of 30 minutes for all speakers. *Written Statements:* Written statements for the October 20–22, 2008 meeting should be received in the SAB Staff Office by October 13, 2008, so that the information may be made available to the INC for its consideration prior to this meeting. For the INC teleconferences in December, statements should be received in the SAB Staff Office by December 1, 2008. Written statements should be supplied to the appropriate DFO as an electronic copy via e-mail (acceptable file formats: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. White at the phone number or e-mail address noted above, preferably at least ten days prior to the face-to-face meeting, to give EPA as much time as possible to process your request.

Dated: September 16, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–22225 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8718–2]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee and the Local Government Advisory Committee (LGAC) will meet by teleconference on Thursday October 9th at 1:30 p.m. to 2:30 p.m. (EDT). Topics to be discussed are recommendations to the Administrator regarding environmental issues affecting small communities, Small Communities Report, and recommendations regarding green buildings.

This is an open meeting and all interested persons are invited to attend. The Committee will hear comments from the public between 2 p.m. and 2:15 p.m. (EDT) on Thursday October 9, 2008. Each individual or organization wishing to address the Committee will be allowed a maximum of five minutes. Also, written comments may be submitted electronically to *araujo.javier@epa.gov* or *eargle.frances@epa.gov*. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis, and the total period for comments may be extended, if the number of requests for appearances require it.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, DFO for the Local Government Advisory Committee (LGAC), at (202) 564–3115 or e-mail at *eargle.frances@epa.gov*. For those interested in participating in the Small Community Advisory Subcommittee meeting, contact Javier Araujo at (202) 564–2642 or e-mail at *araujo.javier@epa.gov.*

Information on Services for Those With Disabilities: For information on access or services for individuals with disabilities, please contact Frances Eargle at (202) 564–3115 or *eargle.frances@epa.gov.* To request accommodations of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 10, 2008.

M. Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. E8–22240 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8717–8]

Proposed CERCLA Administrative Cost Recovery Settlement; Amber Oil Site, Milwaukee, WI, U.S. EPA Region 5 CERCLA Docket No. V–W–'08–C–911

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement, In the Matter of: Amber Oil Site; 1016 N. Hawley Road; Milwaukee, Wisconsin, Agreement for Payment of Past Response Costs, U.S. EPA Region 5 CERCLA Docket No. V–W–'08–C–911. This proposed settlement agreement for payment of U.S. EPA's past response costs includes a compromise of some past response costs incurred by U.S. EPA in connection with the Amber Oil site in Milwaukee, Wisconsin. U.S. EPA is entering into the proposed Agreement with the following twenty-three settling parties: AAA Sales & Engineering, Inc.; AD-Tech Industries, Inc.; Metso Paper USA, Inc. (fka Beloit-Manhattan); Black and Decker Corporation; F. Ziegler Enterprises; Galland-Henning-Nopak, Inc.; Intermet Corporation (fka Ganton Technologies); Leggett & Platt, Inc.; MeadWestvaco Corporation (fka Mead Container); Milwaukee Wire Products; Muza Metal Products; Kraft Foods Global, Inc. (fka Oscar Mayer); Pioneer Products, Inc.; Epicor Industries, Inc. (fdba Plews/Edelmann); Brunswick Corporation (fka Roadmaster Corp.); Alliance Laundry Systems, LLC (fka Speed Queen Co.); Toolrite Manufacturing Co., Inc.; U.S. Chrome Performance Coating; Warner Electric; Wisconsin Central Ltd.; Metak Tek Inernational, Inc. (aka Wisconsin

Centrifugal); Wisconsin Knife Works; and Wrought Washer Mfg., Inc. The settlement requires the settling parties to reimburse the U.S. EPA Hazardous Substance Superfund $190,000 of U.S. EPA's costs of $194,269 incurred as of January 31, 2008. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The U.S. EPA's response to any comments received will be available for public inspection at the site record repository in the West Allis Public Library, 7421 West Nation Avenue, Milwaukee, Wisconsin, and at the U.S. EPA Record Center, Room 714, U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois. This is the second consent agreement concerning the Amber Oil Site in Milwaukee. An earlier administrative settlement with 55 different settling parties, In the Matter of Amber Oil Site, U.S. EPA Docket No. V–W–'04–C–780 was finalized in 2004. Pursuant to that Agreement, those other 55 settling parties committed to perform the clean-up of the Amber Oil Site, and pay past, intermediate, and oversight costs as defined in that administrative settlement. Past costs in the amount of $155,591 were compromised under that earlier Agreement in consideration of the 55 settling parties' commitment to perform the removal and pay the costs described above. That $155,591 in compromised costs is part of the $194,269 U.S. EPA sought to recover in February 2008, $190,000 of which these 23 settling represents are committing to pay pursuant to the proposed Amber Oil Site Agreement, U.S. EPA Region 5 Docket No. V–W–'08–C–911, which Agreement is the subject of this notice of solicitation of public comment.

DATES: Comments must be submitted to U.S. EPA on or before 30 days from date of publication of this notice and request for public comment.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Record Center, Room 714, 77 West Jackson Boulevard, Chicago, Illinois and at the West Allis Public Library, 7421 West Nation Avenue, Milwaukee, Wisconsin. A copy of the proposed settlement may be obtained from U.S. EPA Record Center, Room 714, U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois or by calling tel. no. (312)–353–5821. Comments should reference the Amber Oil site in Milwaukee, Wisconsin and EPA Region 5 CERCLA Docket No. V–W–'08–C–911 and should be addressed to Mr. Jerome Kujawa, U.S. EPA Office of Regional Counsel (C–14J), 77 West Jackson Boulevard, Chicago, Illinois 60604 or *kujawa.jerome@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Kujawa, U.S. EPA Office of Regional Counsel (C–14J) at 77 West Jackson Boulevard, Chicago, IL 60604 or at tel. no. (312)–886–6731 or via e-mail at *kujawa.jerome@epa.gov.*

Dated: September 11, 2008.

Richard C. Karl,

Director, Superfund Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. E8–22228 Filed 9–22–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–2070; WT Docket No. 08–165]

Wireless Telecommunications Bureau Grants Extension of Time To File Comments on CTIA's Petition for Declaratory Ruling Regarding Wireless Facilities Siting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (Commission) finds that a short period of additional time will permit all interested parties to file more thorough and thoughtful comments on a July 11, 2008 petition for Declaratory Ruling (Petition) filed by CTIA—The Wireless Association (CTIA). In its Petition, CTIA asked the Commission to clarify the provisions of section 332(c)(7)(B)(v) of the Communications Act, as amended, that CTIA contends are ambiguous and that have been unreasonably interpreted. CTIA further requested that the Commission preempt local ordinances and state laws that it believes violate section 253(a) of the Communications Act, as amended. The Commission states that an extension of time for comments and reply comments should lead to a more complete and better-informed record, and thus, it finds that good cause exists to provide all parties an extension of time for filing comments and reply comments on the Petition.

DATES: Interested parties may file comments on or before September 29, 2008, and reply comments on or before October 14, 2008.

ADDRESSES: You may submit comments, identified by WT Docket No. 08–165, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau at (202) 418–1883 or *Michael.Rowan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice released on September 10, 2008. The full text of the public notice is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.* Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–165. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov.*

On July 11, 2008, CTIA filed its Petition requesting that the Commission issue a Declaratory Ruling clarifying provisions of the Communications Act

of 1934, as amended (Communications Act) regarding state and local review of wireless facility siting applications.[1] Specifically, CTIA asks the Commission to ''resolve open questions regarding the time frames in which zoning authorities must act on siting requests, the importance of competitive entry by multiple providers in each market, and the impropriety of unduly burdensome requirements imposed on wireless providers but not on other entities.'' [2] On August 14, 2008, the Commission established a pleading cycle for comments on the CTIA Petition.[3] The current deadline for comments is September 15, 2008, and the current deadline for reply comments is September 29, 2008.

On August 22, 2008, Montgomery County, Maryland (Montgomery County) filed a Motion for Extension of Time. On August 25, 2008, the National Association of Telecommunications Officers and Advisors (NATOA), the National Association of Counties, the National League of Cities, and the United States Conference of Mayors (collectively Associations) filed a motion to extend the time for filing comments and reply comments. On August 26, 2008, the Greater Metro Telecommunications Consortium and Rainier Communications Commission filed an amended motion to extend the time for filing comments and reply comments. Each of the motions requests a comment period of 90 days and a reply comment period of 45 days. On August 26, 2008, CTIA filed an Opposition to Motions for Extension of Time that addresses these three motions. On August 29, 2008, Montgomery County, Maryland filed a Reply to CTIA's opposition to the motions for extension of time. On September 8, 2008, the cities of Bar Harbor Islands, Cutler Bay, Hollywood, Homestead, Miramar, Sunrise, and Weston (collectively Florida Cities) filed a Motion for Extension of Time seeking an additional 30 days to file their comments. Also on September 8, 2008, the Airports Council International-North America (ACI–NA) filed a motion to extend the time for filing comments and reply comments by 30 days and 15 days, respectively.

In support of their motions, Montgomery County and the Associations note that NATOA's annual conference takes place immediately after initial comments are due, and that many attendees are involved in the processes that the petition addresses. In addition, the Associations explain that the current deadline does not allow enough time for them to complete an analysis and provide comments on the complex legal and factual issues raised by CTIA's Petition. The Associations also indicate that they need additional time to identify local governments that the Petition alleges to have engaged in certain conduct and to address those allegations. Montgomery County further states that given that the petition rests on factual assertions, and that the petition seeks to change how sections 332 and 253 of the Communications Act[4] have been applied for the last twelve years, it is important to allow sufficient time for local governments to provide reasonable responses. Florida Cities ask for an extension of time to file their comments due to the effects that Hurricane Ike is likely to have on them. ACI–NA also contends that granting an extension will not harm or otherwise prejudice the Commission or any interested party. In its Opposition, CTIA asserts that the comment dates provide adequate time for parties, and that the motions do not provide an adequate rationale for an extension.

The Commission notes its policy that extensions of time shall not be routinely granted. The Commission finds that the moving parties have not established good cause for the full extensions that they request, but it states that a short period of additional time will permit all interested parties to file more thorough and thoughtful comments, which should lead to a more complete and better-informed record. The Commission thus finds that good cause exists to provide all parties an extension of time from September 15, 2008 to September 29, 2008 for filing comments in this proceeding and from September 30, 2008 to October 14, 2008 for filing reply comments in this proceeding.

This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[5] Parties making oral *ex parte* presentations in this proceeding are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.[6] More than a one-or two-sentence description of the views and arguments presented is generally required.[7]

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

[1] In the Matter of Petition for Declaratory Ruling to Clarify Provisions of section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Petition for Declaratory Ruling*, WT Docket No. 08–165, filed July 11, 2008 (Petition).

[2] *Id.* at ii.

[3] *See* Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling by CTIA—The Wireless Association to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, *Public Notice*, 23 FCC Rcd 12198 (2008).

[4] 47 U.S.C. 332, 253.

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

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

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

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Parties shall send one copy of their comments and reply comments to Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, e-mail *FCC@BCPIWEB.com.* Comments filed in response to this public notice will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, WT Docket No. 08–165. The comments may also be purchased from Best Copy and Printing, Inc., telephone (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com.*

Federal Communications Commission.

James D. Schlichting,

Acting Chief, Wireless Telecommunications Bureau.

[FR Doc. E8–22311 Filed 9–22–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before November 24, 2008.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

• *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.

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

• *E-mail: comments@FDIC.gov.* Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.

• *Mail:* Herbert J. Messite (202–898–6834), Counsel, Attn: Comments, Room F–1052, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Herbert J. Messite, Counsel, (202) 898–6834, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which are currently approved collections of information.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,650 national banks.

Estimated Time per Response: 46.24 burden hours.

Estimated Total Annual Burden: 305,237 burden hours.

Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 874 state member banks.

Estimated Time per Response: 52.82 burden hours.

Estimated Total Annual Burden: 184,653 burden hours.

FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,162 insured state nonmember banks.

Estimated Time per Response: 36.88 burden hours.

Estimated Total Annual Burden: 761,498 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 650 hours per quarter, depending on an individual institution's circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

The agencies are proposing to implement several changes to the Call Report requirements on a phased-in basis during 2009 to better support their surveillance and supervision of individual banks and enhance their monitoring of the industry's condition and performance. The proposed revisions reflect a thorough and careful review of the agencies' data needs in a variety of areas as banks encounter the most turbulent environment in more than a decade. Thus, the revisions include new items that focus on areas in which the banking industry is facing heightened risk as a result of market turmoil and illiquidity and weakening economic and credit conditions. Where possible, the agencies have sought to establish reporting thresholds for proposed new items. Other proposed new items will be relevant to only a small percentage of banks. The proposed revisions are discussed in detail in sections II.A through IV.F of this notice.

In their review of data needs in the current environment, the agencies concluded that additional information on banks' securitization and structured finance activities would assist the agencies in evaluating the nature and scope of banks' involvement with the traditionally off-balance sheet entities that issue these products. However, the Financial Accounting Standards Board (FASB) is proposing to amend the accounting standards governing the accounting for financial asset transfers and the consolidation of variable interest entities in a manner that may cause a substantial volume of assets in bank-sponsored entities to be brought onto bank balance sheets. Therefore, the agencies have decided to wait until the outcome of the FASB's amendment projects is clearer and the effect of the accounting changes on banks' securitization and structured finance activities can be evaluated before proposing to revise the information currently collected on these activities in Schedule RC–S, Servicing, Securitization, and Asset Sale Activities. Depending on the outcome of the amendments (including their effective date) and their impact on banks, the agencies may decide that they are confronted with an immediate and critical need for specific information pertaining to the securitization and structured finance activities significantly affected by the amended accounting standards. If that were the case, the agencies would consider using the previously approved supplement to the Call Report to collect the necessary data for a limited time period in accordance with the policy established for the use of the supplement.[1] The agencies' ongoing

[1] See 67 **Federal Register** 3995, January 27, 2004.

Call Report data needs in this area in response to the amended accounting standards would then be incorporated into a formal proposal that the agencies would publish with a request for comment in accordance with the requirements of the Paperwork Reduction Act of 1995.

The agencies' review also identified a need for data on higher risk 1–4 family residential mortgage loans, often referred to as subprime mortgages, that are either held by banks or serviced for others and on residential mortgage-backed securities for which a significant portion of the underlying mortgage loans are higher risk. The agencies will be developing a separate reporting proposal that would request industry comment on the collection of information in the Call Report on these higher risk residential mortgages and residential mortgage-backed securities, including proposed definitions for such mortgages and securities. The proposal would be published in the **Federal Register** and the comments received would assist the agencies in determining whether and how to proceed with the collection of data on these mortgages and securities in the Call Report.

With respect to the proposed Call Report changes that are the subject of this proposal, the revisions that would take effect as of March 31, 2009, include:

- The addition of new items in response to a revised accounting standard that will provide information on held-for-investment loans and leases acquired in business combinations;
- Revisions to several Call Report schedules in response to accounting changes applicable to noncontrolling (minority) interests in consolidated subsidiaries;
- Clarifications of the definition of the term ''loan secured by real estate'' and of the instructions for reporting unused commitments;
- The addition of a new item to be reported annually on the bank's fiscal year-end date;
- Exemptions from reporting certain existing Call Report items for banks with less than $1 billion in total assets;
- Instructional guidance on quantifying misstatements in the Call Report; and
- The elimination of confidential treatment for data collected on fiduciary income, expenses, and losses.

The proposed Call Report revisions to be implemented as of June 30, 2009, include new or revised items for:

- Real estate construction and development loans outstanding with capitalized interest and the amount of such interest included in income for the quarter (for banks with construction and development loan concentrations);
- Holdings of collateralized debt obligations and other structured financial products by type of product and underlying collateral;
- Holdings of commercial mortgage-backed securities;
- Unused commitments with an original maturity of one year or less to asset-backed commercial paper conduits;
- Fair value measurements by level for asset and liability categories reported at fair value on a recurring basis (for banks that have $500 million or more in total assets, apply a fair value option, or are required to complete the Call Report trading schedule);
- Pledged loans and pledged trading assets;
- Collateral held against over-the-counter (OTC) derivative exposures by type of collateral and type of counterparty as well as the current credit exposure on OTC derivatives by type of counterparty (for banks with $10 billion or more in total assets);
- Remaining maturities of unsecured other borrowings and subordinated notes and debentures;
- Investments in real estate ventures;
- Held-to-maturity and available-for-sale securities in domestic offices (for banks that have both domestic and foreign offices);
- Past due and nonaccrual trading assets;
- Credit derivatives by credit quality and remaining maturity and by regulatory capital treatment; and
- Whether the bank is a trustee or custodian for certain types of accounts or provides certain services in connection with orders for securities transactions regardless of whether the bank exercises trust powers, which will take the form of yes/no questions.

The proposed Call Report revisions that would take effect December 31, 2009, apply only to Schedule RC–T, Fiduciary and Related Services. These revisions include:

- Breaking out foundations and endowments as well as investment advisory agency accounts as separate types of fiduciary accounts in the schedule's sections for reporting fiduciary and related assets and income;
- Adding items for Individual Retirement Accounts and similar accounts included in fiduciary and related assets;
- Expanding the breakdown of managed assets by type of asset to cover all types of fiduciary accounts;
- Adding new asset types in the breakdown of managed assets by type of asset;
- Revising the manner in which discretionary investments in common trust funds and collective investment funds are reported in the breakdown of managed assets by type of asset;
- Adding items for the market value of discretionary investments in proprietary mutual funds and the number of managed accounts holding such investments; and
- Adding items for the number and principal amount outstanding of debt issues in substantive default for which the institution serves as indenture trustee.

For the March 31, June 30, and December 31, 2009, report dates, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report data items discussed in this proposal and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision and extension of currently approved collections.

II. Discussion of Revisions Proposed for March 2009

A. Loans and Leases Acquired in Business Combinations

Banks must apply Statement of Financial Accounting Standards No. 141 (Revised), *Business Combinations* (FAS 141(R)), which was issued in December 2007, prospectively to business combinations for which the acquisition date is on or after the beginning of their first annual reporting period beginning on or after December 15, 2008. Thus, for banks with calendar year fiscal years, FAS 141(R) will apply to business combinations with acquisition dates on or after January 1, 2009. Under FAS 141(R), all business combinations are to be accounted for by applying the acquisition method.

Under current generally accepted accounting principles, loans to be held for investment that are acquired in a business combination accounted for using the purchase method generally are recorded at ''present values of amounts to be received determined at appropriate current interest rates, less allowances'' for loan and lease losses (ALLL).[2] Thus,

[2] See Statement of Financial Accounting Standards No. 141, *Business Combinations* (FAS 141), paragraph 57(b). This accounting treatment does not apply to those acquired loans within the scope of American Institute of Certified Public Accountants Statement of Position 03–3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer* (SOP 03–03).

in practice, an acquired bank's ALLL generally is carried over to the acquiring bank's (consolidated) balance sheet. In contrast, under FAS 141(R), a bank acquiring loans to be held for investment in a business combination accounted for using the acquisition method must record these loans at fair value. The fair value of these loans incorporates assumptions regarding credit risk. As a result, FAS 141(R) does not permit an acquiring bank to carry over the acquired bank's ALLL. This same prohibition on carrying over the ALLL would apply in those situations when a bank must apply push down accounting, which is the establishment of a new accounting basis for a bank in its separate financial statements and its Call Report as a result of the bank becoming substantially wholly owned via a purchase transaction or a series of purchase transactions.

Because of this significant change in the accounting for acquired loans, paragraph 68(h) of FAS 141(R) requires the following disclosures about the loans (not subject to SOP 03–3) and leases that were acquired in each business combination that occurred during the reporting period:

- The fair value of the loans and leases;
- The gross contractual amounts receivable; and
- The best estimate at the acquisition date of the contractual cash flows not expected to be collected.

These disclosures are intended to assist users of financial statements in understanding the credit quality and collectibility of the acquired loans and leases at the time of their acquisition. Accordingly, and in recognition of this significant change in accounting practice for business combinations, the agencies are proposing to add new items to the Call Report that would encompass the three acquisition date disclosures required by FAS 141(R) cited above for the following categories of acquired held-for-investment loans (not subject to SOP 03–3) and leases:

- Loans secured by real estate;
- Commercial and industrial loans;
- Loans to individuals for household, family, and other personal expenditures; and
- All other loans and all leases.

These new items would be completed by banks that have engaged in business combinations that must be accounted for in accordance with FAS 141(R) or that have been involved in push down accounting transactions to which the measurement principles in FAS 141(R) apply, i.e., in general, transactions for which the acquisition date is on or after January 1, 2009. A bank that has completed one or more business combinations or has applied push down accounting during the current calendar year would report these acquisition date data (as aggregate totals if multiple business combinations have occurred) in each Call Report submission after the acquisition date during that year.

The agencies are also considering whether banks that have engaged in FAS 141(R) business combinations should provide additional information in the Call Report about the acquired held-for-investment loans (not subject to SOP 03–3) and leases and the loss allowances established for them in periods after their acquisition. The agencies are considering requiring banks to report the outstanding balance of these acquired loans and leases, their carrying amount, and the amount of the allowance for post-acquisition losses on these loans and leases, which is consistent with the information that banks currently report in the Call Report about ''purchased impaired loans'' accounted for in accordance with SOP 03–3. Since these purchased loans will be recorded at fair value at acquisition, this information would help the agencies and other users of the Call Report to track management's judgments regarding the collectibility of the acquired loans and leases in periods after the acquisition date and evaluate fluctuations in the level of the overall ALLL as a percentage of the held-for-investment loan and lease portfolio in periods after a business combination. However, the agencies recognize that information about acquired loans and leases and related allowances will become less useful from an analytical standpoint with the passage of time after a business combination.

The agencies request comment on the merits and availability of the post-acquisition loan and lease data described above that are being considered for possible addition to the Call Report and the period of time after a business combination this information should be reported (e.g., through the end of the calendar year of the acquisition, through the end of the calendar year after the year of the acquisition, for a longer period, or for some other period such as the first four calendar quarters after the acquisition).

B. Noncontrolling Interests in Consolidated Financial Statements

In December 2007, the FASB issued Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (FAS 160). FAS 160 requires a bank to clearly present in its consolidated financial statements the equity ownership interest in and the financial statement results of its subsidiaries that are attributable to the noncontrolling ownership interests in these subsidiaries. FAS 160 defines a noncontrolling interest, also called a minority interest, as the portion of equity in a bank's subsidiary not attributable, directly or indirectly, to the parent bank. Under FAS 160, the ownership interests in subsidiaries held by the noncontrolling interests must be clearly identified, labeled, and presented in the consolidated balance sheet within equity capital, but separate from the parent bank's equity capital. FAS 160 also requires that the amount of consolidated net income attributable to the bank and to the noncontrolling interests in the bank's subsidiaries be clearly identified and presented on the face of the consolidated income statement. In this regard, the consolidated income statement will reflect the amount of the bank's consolidated net income, with separate line items then indicating the portions of the consolidated net income attributable to the noncontrolling interests and to the parent bank.

The agencies are proposing to make several changes to conform the Call Report to the presentation requirements of FAS 160. The agencies propose to amend Schedule RC, Balance Sheet, by replacing item 22, ''Minority interest in consolidated subsidiaries,'' which is currently reported outside the Equity Capital section, with a new item 27.b in the Equity Capital section for ''Noncontrolling (minority) interests in consolidated subsidiaries.'' The agencies also propose to renumber and rename Schedule RC, items 26 through 29 in the following manner:

- Item 26.a, ''Retained earnings;''
- Item 26.b, ''Accumulated other comprehensive income;''
- Item 26.c, ''Other equity capital components;''
- Item 27.a, ''Total bank equity capital (sum of items 23 through 26.c);''
- Item 27.b, ''Noncontrolling (minority) interests in consolidated subsidiaries;''
- Item 28, ''Total equity capital (sum of items 27.a and 27.b);'' and
- Item 29, ''Total liabilities and equity capital (sum of items 21 and 28).''

The agencies also propose to adjust certain captions in Schedule RC–R, Regulatory Capital, to reflect these changes to the Equity Capital section of the Call Report balance sheet and to conform to FAS 160. Schedule RC–R, item 1, ''Total equity capital (from Schedule RC, item 28),'' will be renamed ''Total bank equity capital (from Schedule RC, item 27.a).''

Schedule RC–R, item 6, ''Qualifying minority interest in consolidated subsidiaries,'' will be renamed to ''Qualifying noncontrolling (minority) interest in consolidated subsidiaries.''

Further, the agencies propose to amend Schedule RI, Income Statement, and Schedule RI–A, Changes in Equity Capital, to add or revise items to conform to FAS 160. In Schedule RI, new items 12, ''Net income (loss) attributable to bank and noncontrolling (minority) interests (sum of items 10 and 11),'' and 13, ''Less: Net income (loss) attributable to noncontrolling (minority) interests,'' will be added to identify the entity's consolidated net income and segregate net income attributable to noncontrolling interests. Current Schedule RI, item 12, ''Net income (loss) (sum of items 10 and 11),'' will be renumbered as item 14 and renamed ''Net income (loss) attributable to bank (item 12 minus item 13).'' The instructions to Schedule RI, item 7.d, ''Other noninterest expense,'' will be amended to remove net income (or loss) attributable to noncontrolling (minority) interests from the current list of components of ''Other noninterest expense.''

Schedule RI–A will be retitled Changes in Bank Equity Capital. In Schedule RI–A, the following changes will be made:

- Current item 1, ''Total equity capital most recently reported for the December 31, 20xx, [previous calendar year-end] Reports of Condition and Income (i.e., after adjustments from amended Reports of Income),'' will be renamed ''Total bank equity capital most recently reported for the December 31, 20xx, Reports of Condition and Income (i.e., after adjustments from amended Reports of Income);''
- Current item 4, ''Net income (loss) (must equal Schedule RI, item 12),'' will be renamed ''Net income (loss) attributable to bank (must equal Schedule RI, item 14);'' and
- Current item 12, ''Total equity capital end of current period (sum of items 3 through 11) (must equal Schedule RC, item 28),'' will be renamed ''Total bank equity capital end of current period (sum of items 3 through 11) (must equal Schedule RC, item 27.a).''

The instructions to Schedule RI–A, item 5, ''Sale, conversion, acquisition, or retirement of capital stock, net,'' will be amended to state that increases and decreases in bank equity capital resulting from changes in a bank's ownership interest in a subsidiary while it retains its controlling financial interest in the subsidiary should be reported in item 5.

C. Clarification of the Definition of Loan Secured by Real Estate

The agencies have found that the definition of a ''loan secured by real estate'' in the Glossary section of the Call Report instructions has been interpreted differently by Call Report preparers and users. This has led to inconsistent reporting of loans collateralized by real estate in the loan schedule (Schedule RC–C) and other schedules of the Call Report that collect loan data. As a result, the agencies are proposing to clarify the definition by explaining that the estimated value of the real estate collateral must be greater than 50 percent of the principal amount of the loan at origination in order for the loan to be considered secured by real estate. Banks should apply this clarified definition prospectively and they need not reevaluate and, if appropriate, recategorize loans that they currently report as loans secured by real estate into other loan categories on the Call Report loan schedule.

The revised definition of a ''loan secured by real estate'' would read as follows:

> For purposes of these reports, a loan secured by real estate is a loan secured wholly or substantially by a lien or liens on real property for which the lien or liens are central to the extension of the credit—that is, the borrower would not have been extended credit in the same amount or on terms as favorable without the lien or liens on real property. To be considered wholly or substantially secured by a lien or liens on real property, the estimated value of the real estate collateral (after deducting any more senior liens) must be greater than 50 percent of the principal amount of the loan at origination. A loan satisfying the criteria above, except a loan to a state or political subdivisions in the U.S., is to be reported as a loan secured by real estate in the Reports of Condition and Income, (1) regardless of whether the loan is secured by a first or a junior lien; (2) regardless of the department within the bank or bank subsidiary that made the loan; (3) regardless of how the loan is categorized in the bank's records; (4) and regardless of the purpose of the financing. Only in a transaction where a lien or liens on real property (with an estimated collateral value greater than 50 percent of the loan's principal amount at origination) have been taken as collateral solely through an abundance of caution and where the loan terms as a consequence have not been made more favorable than they would have been in the absence of the lien or liens, would the loan *not* be considered a loan secured by real estate for purposes of the Reports of Condition and Income. In addition, when a loan is partially secured by a lien or liens on real property, but the estimated value of the real estate collateral (after deducting any more senior liens) is 50 percent or less of the principal amount of the loan at origination, the loan should not be categorized as a loan secured by real estate. Instead, the loan should be reported in one of the other loan categories used in these reports based on the purpose of the loan.

D. Clarification of Instructions for Unused Commitments

Banks report unused commitments in Schedule RC–L, item 1. The instructions for this item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the bank has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the bank is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the agencies have found that some banks have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the agencies consider these arrangements to be within the scope of the existing instructions for reporting commitments in Schedule RC–L, they believe that these instructions may not be sufficiently clear. Therefore, the agencies are proposing to revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' to read as follows:

> Report in the appropriate subitem the unused portions of commitments. Unused commitments are to be reported gross, i.e., include in the appropriate subitem the amounts of commitments acquired from and conveyed to others.

For purposes of this item, commitments include:

(1) Commitments to make or purchase extensions of credit in the form of loans or participations in loans, lease financing receivables, or similar transactions.

(2) Commitments for which the bank has charged a commitment fee or other consideration.

(3) Commitments that are legally binding.

(4) Loan proceeds that the bank is obligated to advance, such as:

(a) Loan draws;

(b) Construction progress payments; and

(c) Seasonal or living advances to farmers under prearranged lines of credit.

(5) Rotating, revolving, and open-end credit arrangements, including, but not limited to, retail credit card lines and home equity lines of credit.

(6) Commitments to issue a commitment at some point in the future, including commitments that have been entered into even though the related loan agreement has not yet been signed.

(7) Overdraft protection on depositors' accounts offered under a program where the bank advises account holders of the available amount of overdraft protection, for example, when accounts are opened or on depositors' account statements or ATM receipts.

(8) The bank's own takedown in securities underwriting transactions.

(9) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements, which are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

Exclude forward contracts and other commitments that meet the definition of a derivative and must be accounted for in accordance with FASB Statement No. 133, which should be reported in Schedule RC–L, item 12. Include the amount (not the fair value) of the unused portions of loan commitments that do not meet the definition of a derivative that the bank has elected to report at fair value under a fair value option. Also include forward contracts that do not meet the definition of a derivative. The unused portions of commitments are to be reported in the appropriate subitem regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligations under certain conditions and regardless of whether they are unconditionally cancelable at any time.

In the case of commitments for syndicated loans, report only the bank's proportional share of the commitment.

For purposes of reporting the unused portions of revolving asset-based lending commitments, the commitment is defined as the amount a bank is obligated to fund—as of the report date—based on the contractually agreed upon terms. In the case of revolving asset-based lending, the unused portions of such commitments should be measured as the difference between (a) the lesser of the contractual borrowing base (i.e., eligible collateral times the advance rate) or the note commitment limit, and (b) the sum of outstanding loans and letters of credit under the commitment. The note commitment limit is the overall maximum loan amount beyond which the bank will not advance funds regardless of the amount of collateral posted. This definition of ''commitment'' is applicable only to revolving asset-based lending, which is a specialized form of secured lending in which a borrower uses current assets (e.g., accounts receivable and inventory) as collateral for a loan. The loan is structured so that the amount of credit is limited by the value of the collateral.

E. Fiscal Year-End Date

Although most banks have a calendar year fiscal year, many banks do not. The agencies currently do not have a systematic means for identifying the fiscal year-end dates of banks. In contrast, savings associations report their fiscal year-ends to the Office of Thrift Supervision in the Thrift Financial Report.

New accounting standards typically take effect for fiscal years beginning on or after a date specified in the standard and banks are expected to adopt new standards for Call Report purposes in accordance with their effective date. Thus, individual banks must adopt new standards in different quarterly Call Reports based on their fiscal year-end dates. In addition, the applicability of certain regulations is based on a bank's fiscal year. For example, the annual audit and reporting requirements of Part 363 of the FDIC's regulations apply to insured institutions with $500 million or more in total assets as of the beginning of their fiscal year. As another example, banks do not have to start complying with Regulation R—Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934 (12 CFR part 218), which the Board and the Securities and Exchange Commission (SEC) jointly adopted in September 2007, and the ''broker'' exceptions in section 3(a)(4) of the Securities Exchange Act of 1934 until the first day of their fiscal year commencing after September 30, 2008.

To facilitate the agencies' ability to determine when individual banks should be implementing accounting standards and regulations and to assess their compliance, the agencies are proposing to add a Memorandum item to the Call Report balance sheet in which banks would report their fiscal year-end date. This item would be collected annually as of each March 31.

F. Exemptions From Reporting for Certain Existing Call Report Items

The agencies have identified certain Call Report items for which the reported data are of lesser usefulness for banks with less than $1 billion in total assets. Accordingly, the agencies are proposing to exempt such banks from completing the following Call Report items effective March 31, 2009:

- Schedule RI, Memorandum item 2, ''Income from the sale and servicing of mutual funds and annuities (in domestic offices);''
- Schedule RC–B, Memorandum items 5.a through 5.f, ''Asset-backed securities,'' on the FFIEC 031 report;[3]
- Schedule RC–L, item 2.a, ''Amount of financial standby letters of credit conveyed to others;'' and
- Schedule RC–L, item 3.a, ''Amount of performance standby letters of credit conveyed to others.''

G. Quantifying Misstatements in the Call Report

The General Instructions section of the Call Report instructions discusses the filing of amended Call Reports. In this regard, the instructions state that:

When dealing with the recognition and measurement of events and transactions in the Call Report, amended reports may be required if a bank's primary federal bank supervisory authority determines that the reports as previously submitted contain errors that are material for the reporting bank. Materiality is a qualitative characteristic of accounting information which is defined in Financial Accounting Standards Board (FASB) Concepts Statement No. 2 as ''the magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.''

FASB Statement No. 154, *Accounting Changes and Error Corrections* (FAS 154), provides guidance for reporting the correction of an error or misstatement in previously issued financial statements. An error or misstatement can result from mathematical mistakes, mistakes in the application of generally accepted accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared, and includes a change from an accounting principle that is not generally accepted to one that is generally accepted. The Glossary entry for ''Accounting Changes'' in the Call Report instructions includes a section on ''Corrections of Accounting Errors'' that provides guidance on reporting such corrections that is consistent with FAS 154. However, neither FAS 154 nor the Glossary entry for ''Accounting Changes'' specifies the appropriate method to quantify an error or

[3] On the FFIEC 041 report, banks with less than $1 billion in assets are currently exempt from completing these Memorandum items.

misstatement for purposes of evaluating materiality.

In September 2006, the SEC staff noted in Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108),[4] that in describing the concept of materiality, FASB Concepts Statement No. 2, *Qualitative Characteristics of Accounting Information,* indicates that materiality determinations are based on whether ''it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced *by the inclusion or correction of the item''* (emphasis added). The staff believes registrants must quantify the impact of correcting all misstatements, including both the carryover and reversing effects of prior year misstatements, on the current year financial statements.

SAB 108 describes two approaches, generally referred to as ''rollover'' and ''iron curtain,'' that have been commonly used to accumulate and quantify misstatements. The rollover approach ''quantifies a misstatement based on the amount of the error originating in the current year income statement,'' which ''ignores the 'carryover effects' of prior year misstatements.'' In contrast, the ''iron curtain approach quantifies a misstatement based on the effects of correcting the misstatement existing in the balance sheet at the end of the current year, irrespective of the misstatement's year(s) of origination.'' Because each of these approaches has its weaknesses, SAB 108 advises that the impact of correcting all misstatements on current year financial statements should be accomplished by quantifying an error under both the rollover and iron curtain approaches and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, an adjustment to the financial statements would be required. Guidance on the consideration of all relevant factors when assessing the materiality of misstatements is provided in the SEC's Staff Accounting Bulletin No. 99, *Materiality* (SAB 99).[5] SAB 108 observes that when the correction of an error in the current year would materially misstate the current year's financial statements because the correction includes the effect of the prior year misstatements, the prior year financial statements should be corrected.

The agencies have advised banks that, for Call Report purposes, a bank that is a public company or a subsidiary of a public company should apply the guidance from SAB 108 and SAB 99 when quantifying the impact of correcting misstatements, including both the carryover and reversing effects of prior year misstatements, on their current year Call Reports.[6] The agencies believe that the guidance in SAB 108 and SAB 99 represents sound accounting practices that all banks, including those that are not public companies, should follow for purposes of quantifying misstatements and considering all relevant factors when assessing the materiality of misstatements in their Call Reports. Accordingly, the agencies are proposing to incorporate the guidance in these two Staff Accounting Bulletins into the section of the ''Accounting Changes'' Glossary entry on error corrections, thereby establishing a single approach for quantifying misstatements in the Call Report that would be applicable to all banks. The Glossary entry would explain that the impact of correcting all misstatements on current year Call Reports should be accomplished by quantifying an error under both the rollover and iron curtain approaches and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, appropriate adjustments to Call Reports would be required.

H. Eliminating Confidential Treatment for Fiduciary Income, Expense, and Loss Data

An important public policy issue for the agencies has been how to use market discipline to complement supervisory resources. Market discipline relies on market participants having sufficient appropriate information about the financial condition and risks of banks. The Call Report, in particular, is widely used by securities analysts, rating agencies, and large institutional investors as sources of bank-specific data. Disclosure that increases transparency should lead to more accurate market assessments of individual banks' performance and risks. This, in turn, should result in more effective market discipline on banks.

Despite this emphasis on market discipline, the FFIEC and the agencies currently accord confidential treatment to the information that certain institutions report in Call Report Schedule RC–T, Fiduciary and Related Services, on fiduciary and related services income, expenses, and losses (items 12 through 18, items 19.a through 23, and Memorandum item 4). Approximately 400 institutions that exercise fiduciary powers and have either total fiduciary assets greater than $250 million or gross fiduciary and related services income greater than 10 percent of revenue report their fiduciary and related services income quarterly and expenses and losses annually as of year-end. Around 200 institutions that exercise fiduciary powers, have total fiduciary assets greater than $100 million but less than or equal to $250 million, and do not meet the fiduciary income test mentioned above report their fiduciary and related services income, expenses, and losses annually as of year-end. An additional 1,000 institutions that exercise fiduciary powers, have total fiduciary assets of $100 million or less, and do not meet the fiduciary income test mentioned above are exempt from reporting their fiduciary and related services income, expenses, and losses.

Data on fiduciary and related services income, expenses, and losses (except for gross fiduciary and related services income, which is also reported in each institution's Call Report income statement) are the only financial information currently collected on the Call Report that is treated as confidential on an individual institution basis. Nevertheless, the agencies publish aggregate data derived from these confidential items. The agencies have accorded confidential treatment to the fiduciary services income data for individual institutions since it began to be collected in 1997 in a separate report, the Annual Report of Trust Assets (FFIEC 001). Confidential treatment was retained when the reporting of trust data was incorporated into the Call Report and the separate trust report was eliminated in 2001. However, the agencies do not preclude institutions from publicly disclosing the fiduciary and related services income, expense, and loss data that the agencies treat as confidential.

The agencies originally applied this confidential treatment to the fiduciary and related services income, expense, and loss information because these data

[4] SAB 108 can be accessed at *http://www.sec.gov/interps/account/sab108.pdf.* SAB 108 has been codified as Topic 1.N. in the SEC's Codification of Staff Accounting Bulletins.

[5] SAB 99 can be accessed at *http://www.sec.gov/interps/account/sab99.htm.* SAB 99 has been codified as Topic 1.M. in the SEC's Codification of Staff Accounting Bulletins.

[6] For example, see the Call Report Supplemental Instructions for June 2007 at *http://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_041_suppinst_200706.pdf.*

generally pertain to only a portion of a reporting institution's total operations and not to the institution as a whole. However, the agencies make publicly available on an individual bank basis the Call Report data they collect on income and expenses from foreign offices from banks with such offices where foreign activities exceed certain levels even though these data pertain to only a portion of these banks' total operations.

In addition, under the Uniform Interagency Trust Rating System, the agencies assign a rating to the earnings of an institution's fiduciary activities at those institutions with fiduciary assets of more than $100 million, which are also the institutions that report their fiduciary and related services income, expenses, and losses in Call Report Schedule RC–T. The agencies' evaluation of an institution's trust earnings considers such factors as the profitability of fiduciary activities in relation to the size and scope of those activities and the institution's overall business, taking this into account by functions and product lines. Although the agencies' ratings for individual institutions are not publicly available, the reason for rating the trust earnings of institutions with more than $100 million in fiduciary assets—its effect on the financial condition of the institution—means that fiduciary and related services income, expense, and loss information for these institutions is also relevant to market participants and others in the public as they seek to evaluate the financial condition and performance of individual institutions. Increasing the transparency of institutions' fiduciary activities by making individual institutions' fiduciary income, expense, and loss data available to the public should improve the market's ability to assess these institutions' performance and risks and thereby enhance market discipline. Accordingly, the agencies are proposing to eliminate the confidential treatment for the data on fiduciary and related services income, expenses, and losses that are reported in Schedule RC–T beginning with the amounts reported as of March 31, 2009. Fiduciary and related services income, expense, and loss data reported in Schedule RC–T for report dates prior to March 31, 2009, would remain confidential.

III. Discussion of Revisions Proposed for June 2009

A. Construction and Development Loans With Interest Reserves

In December 2006, the agencies issued final guidance on commercial real estate (CRE) loans, including construction, land development, and other land (C&D) loans, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance).[7] This guidance was developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. It provides a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy.

In issuing the CRE Guidance, the agencies noted that CRE concentrations had been rising over the past several years and had reached levels that could create safety and soundness concerns in the event of a significant economic downturn. As a consequence, the CRE Guidance explains that, as part of their ongoing supervisory monitoring processes, the agencies would use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. Thus, the CRE Guidance states in part that an institution whose total reported construction, land development, and other land loans is approaching or exceeds 100 percent or more of the institution's total risk-based capital may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. As of March 31, 2008, approximately 28 percent of all banks held C&D loans in excess of 100 percent of their total risk-based capital.

A practice that is common in C&D lending is the establishment of an interest reserve as part of the original underwriting of a C&D loan. The interest reserve account allows the lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance. Frequently, C&D loan budgets will include an interest reserve to carry the project from origination to completion and may cover the project's anticipated sell-out or lease-up period. Although potentially beneficial to the lender and the borrower, the use of interest reserves carries certain risks. Of particular concern is the possibility that an interest reserve could disguise problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement. For example, a C&D loan for a project on which construction ceases before it has been completed or is not completed in a timely manner may appear to be performing if the continued capitalization of interest through the use of an interest reserve keeps the troubled loan current. This practice can erode collateral protection and mask loans that should otherwise be reported as delinquent or in nonaccrual status.

Since the CRE Guidance was issued, market conditions have weakened, most notably in the C&D sector. As this weakening has occurred, the agencies' examiners are encountering C&D loans on projects that are troubled, but where interest has been capitalized inappropriately, resulting in overstated income and understated volumes of past due and nonaccrual C&D loans. Therefore, to assist the agencies in monitoring C&D lending activities at those banks with a concentration of such loans, i.e., C&D loans (in domestic offices) that exceeded 100 percent of total risk-based capital as of the previous calendar year-end, the agencies are proposing to add two new Call Report items. First, banks with such a concentration would report the amount of C&D loans (in domestic offices) included in the Call Report loan schedule (Schedule RC–C) on which the use of interest reserves is provided for in the loan agreement. Second, these banks would report the amount of capitalized interest included in the interest and fee income on loans during the quarter. These data, together with information that banks currently report on the amount of past due and nonaccrual C&D loans, will assist in identifying banks with C&D loan concentrations that may be engaging in questionable interest capitalization practices for supervisory follow-up.

B. Structured Financial Products Carried in Securities and Trading Portfolios

Structured financial products such as collateralized debt obligations (CDOs) have become increasingly more complex and the volume of these financial products has increased substantially in recent years. Structured financial products generally convert a large pool of assets and other exposures (such as derivatives and third-party guarantees) into tradable capital market debt instruments. Some of the more complex financial product structures mix asset classes in an attempt to create investment products that diversify risk.

In recent years, increasingly complex structured financial products have

[7] 71 **Federal Register** 74580, December 12, 2006.

become more widely held as investments and trading assets, allowing investors and traders to acquire positions in a pool of assets with varying risks and rewards depending on the underlying collateral or reference assets. Synthetic structured financial products use credit derivatives and a reference pool of assets, which has led to the creation of hybrid products, which are a combination of cash and synthetic structured financial products. Further, complex products known as CDOs ''squared,'' which are CDOs backed primarily by the tranches of other CDOs, have contributed to the opacity and inability of investors to understand the performance of these highly complex products.

Some holders of structured financial products have sustained financial losses due to defaults and losses on the underlying assets and other exposures. In addition, reduced market liquidity has contributed to significant fair value declines and lack of price transparency for other structured financial products. These recent market events have demonstrated the need for the agencies to collect more comprehensive information on investment products with significant market, credit, liquidity, and valuation risks in order to identify and monitor banks with exposures to these products and to track such exposures for the industry as a whole.

Currently, banks separately report their holdings of regular mortgage-backed securities (MBS) (such as mortgage-backed pass-through securities, collateralized mortgage obligations, and real estate mortgage investment conduits) in the Call Report securities schedule (Schedule RC–B) or trading schedule (Schedule RC–D), as appropriate. All banks separately report their holdings of held-to-maturity and available-for-sale asset-backed securities (ABS) in the securities schedule. Those banks with large trading portfolios separately report their held-for-trading ABS in the trading schedule. Banks' holdings of all other debt securities not issued by governmental entities in the U.S. are reported as ''Other debt securities'' in either the securities or trading schedule, as appropriate. However, the more complex structured financial products discussed above are not separately reported in Schedules RC–B and RC–D, but are currently reported in other line items within these two schedules.

Therefore, the agencies propose to separately collect certain structured financial product data in both the securities and trading schedules of the Call Report. First, the agencies would add line items to collect information on certain structured financial products by type of structure (cash, synthetic, and hybrid). Each of these three new line items would cover CDOs, collateralized loan obligations (CLOs), collateralized bond obligations (CBOs), CDOs squared and cubed, and similar structured financial products.[8] These new line items would be added to the body of the securities schedule and the trading schedule. In Schedule RC–B, the amortized cost and fair value of these three types of structures will be reported using the current four-column format that distinguishes between held-to-maturity and available-for-sale securities. In Schedule RC–D, the fair value of these three types of structures would be reported. Since the new items on structured financial products would include CDOs, the agencies will delete existing Memorandum items 5.a and 5.b from the trading schedule (Schedule RC–D).

Second, the agencies would collect information on these complex structured financial products by the predominant type of collateral supporting the structures in new memorandum items in both Schedule RC–B and Schedule RC–D. The collateral supporting these products has distinct risk characteristics and the new information will provide the agencies with greater insight into the risks associated with the various collateralized structured financial products. The structured financial products would be reported according to the following types of collateral:

- Trust preferred securities issued by financial institutions;
- Trust preferred securities issued by real estate investment trusts;
- Corporate and similar loans;[9]
- 1–4 family residential MBS issued or guaranteed by U.S. government-sponsored enterprises (GSEs);
- 1–4 family residential MBS not issued or guaranteed by GSEs;
- Diversified (mixed) pools of structured financial products such as CDOs squared and cubed (also known as ''pools of pools''); and
- Other collateral.

In Schedule RC–B, amortized cost and fair value would be reported by the predominant type of collateral supporting the structure based on whether the products are classified as held-to-maturity or available-for-sale. In Schedule RC–D, the fair value of these products would be reported by predominant type of collateral supporting the structure.

C. Holdings of Commercial Mortgage-Backed Securities

At present, all banks report information on their holdings of held-to-maturity and available-for-sale MBS in Schedule RC–B, Securities, without distinguishing between residential and commercial MBS. Banks with average trading assets of $2 million or more in any of the four preceding calendar quarters provide information on MBS held for trading in Schedule RC–D, but only those with average trading assets of $1 billion or more disclose the amount of their residential and commercial MBS.

Differences in residential mortgages and commercial mortgages carry through to MBS backed by these two types of mortgages. In contrast to residential mortgage loans, commercial mortgage loans are normally nonrecourse, which means that if the borrower defaults, the creditor cannot seize any other assets of the borrower. As a consequence, the ability of the underlying commercial real estate to produce income and the value of the property are key factors when assessing the credit risk of commercial MBS. In addition, the prepayment risk of commercial MBS is lower than on residential MBS because commercial mortgages normally place restrictions on prepayment that typically are not present on residential mortgages. Furthermore, the residential real estate market often performs differently than the commercial real estate market.

Given the differences between residential and commercial MBS, the agencies are proposing to revise the reporting of MBS in Schedule RC–B, Securities, and Schedule RC–D, Trading Assets and Liabilities, in order to separately identify and track bank holdings of commercial MBS. In Schedule RC–B, items 4.a, ''Pass-through securities,'' and 4.b, ''Other mortgage-backed securities,'' would be revised to cover only residential MBS. New items 4.c.(1) and (2) would be added for ''Commercial pass-through securities'' and ''Other commercial mortgage-backed securities.'' Similarly, in Schedule RC–D, items 4.a through 4.c would cover only residential MBS and a new item 4.d would collect data on ''Commercial mortgage-backed securities.'' These new and revised items would replace Memorandum items 4.a, ''Residential mortgage-backed

[8] These new line items would not include mortgage-backed and asset-backed commercial paper, which would continue to be reported as MBS and ABS, respectively, in Schedules RC–B and RC–D.

[9] Securities backed by commercial and industrial loans that are commonly regarded as ABS rather than CLOs in the marketplace would continue to be reported as ABS in Schedules RC–B and RC–D.

securities,'' and 4.b, ''Commercial mortgage-backed securities,'' in Schedule RC–D, which are currently completed only by banks with average trading assets of $1 billion or more in any of the four preceding calendar quarters.

D. Unused Eligible Liquidity Facilities for Asset-Backed Commercial Paper (ABCP) Conduits With an Original Maturity of One Year or Less

Under the agencies' risk-based capital guidelines, banks are required to hold capital against the unused portions of eligible liquidity facilities that provide support to ABCP programs. The capital guidelines apply different risk-based capital requirements to eligible liquidity facilities based on the original maturity of the facilities. Banks are currently required to hold less capital against eligible liquidity facilities with original maturities of one year or less than against liquidity facilities with original maturities in excess of one year. However, because of the current structure of Schedule RC–R, Regulatory Capital, the instructions for the schedule direct banks to report the credit equivalent amount of both types of eligible liquidity facilities in item 53, ''Unused commitments with an original maturity exceeding one year.'' The reporting of both types of eligible liquidity facilities in a single item has been accomplished by having banks adjust the credit equivalent amount of eligible liquidity facilities with original maturities of one year or less to produce the effect of the lower capital charge applicable to such liquidity facilities. This approach does not promote transparency with respect to the actual credit equivalent amount of eligible liquidity facilities with original maturities of one year or less and does not allow for verification of the accuracy of the credit converting and risk weighting of these exposures.

To address these concerns, the agencies propose to renumber Schedule RC–R, item 53 as item 53.a and add a new item 53.b, ''Unused commitments with an original maturity of one year or less to asset-backed commercial paper conduits,'' to Schedule RC–R. The credit conversion factor applied to amounts reported in item 53.b, column A, would be 10 percent.

E. Fair Value Measurements

Effective for the March 31, 2007, report date, the banking agencies began collecting information on certain assets and liabilities measured at fair value on Call Report Schedule RC–Q, Financial Assets and Liabilities Measured at Fair Value. Currently, this schedule is completed by banks with a significant level of trading activity or that use a fair value option. The information collected on Schedule RC–Q is intended to be consistent with the fair value disclosures and other requirements in FASB Statement No. 157, *Fair Value Measurements* (FAS 157).

Based on the banking agencies' ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of items at fair value on Schedule RC, Balance Sheet, the agencies are proposing to expand the data collected on Schedule RC–Q in two material respects.

First, to improve the consistency of data collected on Schedule RC–Q with the FAS 157 disclosure requirements and industry disclosure practices, the agencies are proposing to expand the detail of the collected data. The agencies are proposing to expand the detail on Schedule RC–Q to collect fair value information on all assets and liabilities reported at fair value on a recurring basis in a manner consistent with the asset and liability breakdowns on Schedule RC. Thus, the agencies are proposing to add items to collect fair value information on:

- Available-for-sale securities;
- Federal funds sold and securities purchased under agreements to resell;
- Federal funds purchased and securities sold under agreements to repurchase;
- Other borrowed money; and
- Subordinated notes and debentures.

The agencies also are proposing to modify the existing collection of loan and lease data and trading asset and liability data to collect data separately for:

- Loans and leases held for sale;
- Loans and leases held for investment;
- Trading derivative assets;
- Other trading assets;
- Trading derivative liabilities; and
- Other trading liabilities.

The agencies would also add totals to capture total assets and total liabilities for items reported on the schedule. In addition, the agencies are proposing to modify the existing items for ''other financial assets and servicing assets'' and ''other financial liabilities and servicing liabilities'' to collect information on ''other assets'' and ''other liabilities'' reported at fair value on a recurring basis, including nontrading derivatives.

Components of ''other assets'' and ''other liabilities'' would be separately reported if they are greater than $25,000 and exceed 25 percent of the total fair value of ''other assets'' and ''other liabilities,'' respectively. In conjunction with this change, the existing reporting for loan commitments accounted for under a fair value option would be revised to include these instruments, based on whether their fair values are positive or negative, in the items for ''other assets'' and ''other liabilities'' reported at fair value on a recurring basis, with separate disclosure of these commitments if significant.

Second, the agencies are proposing to modify the reporting criteria for Schedule RC–Q. The current instructions require all banks that have adopted FAS 157 and (1) have elected to account for financial instruments or servicing assets and liabilities at fair value under a fair value option or (2) are required to complete Schedule RC–D, Trading Assets and Liabilities, to complete Schedule RC–Q. The agencies are proposing to maintain this reporting requirement for banks that use a fair value option or that have significant trading activity. In addition, the agencies are proposing to extend the requirement to complete Schedule RC–Q to all banks that reported $500 million or more in total assets at the beginning of their fiscal year, regardless of whether they have elected to apply a fair value option to financial or servicing assets and liabilities. Thus, Schedule RC–Q would be completed by all banks that are required to obtain an independent annual financial statement audit pursuant to Part 363 of the FDIC's regulations and are therefore required to include the FAS 157 fair value disclosures in their financial statements.

The banking agencies have determined that the proposed information is necessary to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes. The collection of the information on Schedule RC–Q, as proposed, will facilitate and enhance the banking agencies' ability to monitor the extent of fair value accounting in banks' Reports of Condition, including the elective use of fair value accounting and the nature of the inputs used in the valuation process, pursuant to the disclosure requirements of FAS 157. The information collected on Schedule RC–Q is consistent with the disclosures required by FAS 157 and consistent with industry practice for reporting fair value measurements and should, therefore, not impose significant incremental burden on banks.

F. Pledged Loans in Loan and Trading Portfolios and Pledged Trading Securities

Banks have been pledging loans for many years and the volume of these pledges has grown considerably in recent years. Pledging of bank loans is the act of setting aside certain loans to secure or collateralize bank transactions with the bank continuing to own the loans unless the bank defaults on the transaction. Pledging is used for securing public deposits, repurchase agreements, and other bank borrowings. Pledging affects a bank's liquidity and other asset and liability management programs.

Today there are a number of alternative funding structures used by banks that require banks to pledge loans. Some of these funding structures include pledging on-balance sheet loans to finance and support securitization structures held by the bank that do not meet sales treatment, pledging loans to secure borrowings from a Federal Home Loan Bank, and packaging of on-balance sheet loans to collateralize bonds sold by banks. Currently, the Call Report does not provide information on the volume of pledged loans. Therefore, the banking agencies propose to collect the total amount of held-for-sale and held-for-investment loans and leases reported in Schedule RC–C, Loans and Lease Financing Receivables, that are pledged and the total amount of pledged loans that are carried in the trading portfolio and reported in Schedule RC–D, Trading Assets and Liabilities.

In addition, although the agencies have long collected data on total amount of held-to-maturity and available-for-sale securities reported in Schedule RC–B, Securities, that are pledged, banks have not been required to report the amount of securities carried in the trading portfolio that are pledged. Therefore, for reasons similar to those for collecting data on pledged loans, the agencies are proposing to add an item to Schedule RC–D to capture the amount of pledged trading securities.

G. Collateral for OTC Derivative Exposures and Distribution of Credit Exposures

The growth in banks' OTC derivatives and the related counterparty credit exposures has been significant in recent years. For some major dealer banks, the counterparty credit risk from OTC derivatives rivals or exceeds their commercial and industrial loans outstanding. Despite the magnitude of these derivative exposures, there is virtually no information on OTC derivative counterparty credit exposures and associated risk mitigation in the Call Report.

Given the size of OTC derivative counterparty credit exposures, and the important risk mitigation provided by collateral held to offset or mitigate such exposures, information on the distribution of each would assist the agencies in their oversight and supervision of banks engaging in OTC derivative activities. Therefore, the agencies propose to collect data in Schedule RC–L, Derivatives and Off-Balance Sheet Items, that will provide a breakdown of the fair value of collateral posted for OTC derivative exposures by type of collateral and type of derivative counterparty and a separate breakdown of the current credit exposure on OTC derivatives by type of counterparty. This information would give the agencies important insights into the extent to which collateral is used as part of the credit risk management practices associated with derivative credit exposures to different types of counterparties and changes over time in the nature and extent of the collateral protection.

Since a majority of OTC derivative transactions are conducted in larger banks, only banks with total assets of $10 billion or more would be required to report the proposed new data. These banks would report, using a matrix, the collateral's fair value allocated by type of counterparty and type of collateral as well as the current credit exposure associated with each type of counterparty. The proposed types of collateral for which the fair value would be reported are (a) cash—U.S. dollar; (b) cash—Other currencies; (c) U.S. Treasury securities; (d) U.S. Government agency and U.S. Government-sponsored agency debt securities; (e) corporate bonds; (f) equity securities; and (g) all other collateral.[10] The fair value of the collateral would be reported according to the following types of counterparties: (a) Banks and securities firms; (b) monoline financial guarantors; (c) hedge funds; (d) sovereign governments; and (e) corporations and all other counterparties. The current credit exposure (after considering the effect of master netting agreements with OTC derivative counterparties) would also be reported for these five types of counterparties. The total current credit exposure from OTC derivative exposures that would be reported for these counterparties in Schedule RC–L would not necessarily equal the current credit exposure in the Call Report's regulatory capital schedule (Schedule RC–R) because the amount reported in Schedule RC–R excludes derivatives not covered by the risk-based capital standards.

[10] All other collateral would include, but not be limited to, mortgage-backed securities, asset-backed securities, and structured financial products.

H. Maturity Distributions of Unsecured Other Borrowings and Subordinated Debt

As part of the Omnibus Budget Reconciliation Act of 1993, Congress enacted depositor preference legislation that elevated the claims of depositors in domestic offices (and in insured branches in Puerto Rico and U.S. territories and possessions) over the claims of general unsecured creditors in a bank failure. When a bank fails, the claims of general unsecured creditors provide a cushion that lowers the cost of the failure to the Deposit Insurance Fund (DIF) administered by the FDIC. The greater the amount of general unsecured creditor claims, the greater the cushion and the lower the cost of the failure to the DIF.

The FDIC is considering proposing an adjustment to the risk-based assessment system so that insured depository institutions with greater amounts of general unsecured long-term liabilities will be rewarded with a lower assessment rate. Currently, the Call Reports lacks information regarding the remaining maturities of unsecured ''other borrowings'' and subordinated notes and debentures. Therefore, the agencies are proposing to collect this information in the Call Report so that the FDIC would be able to implement such an adjustment. More specifically, banks would report separate maturity distributions for ''other borrowings'' (as defined for Schedule RC–M, item 5.b) that are unsecured and for subordinated notes and debentures (as defined for Schedule RC, item 19) in Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments. The maturity distributions would include remaining maturities of one year or less, over one year through three years, over three years through five years, and over five years.

I. Investments in Real Estate Ventures

At present, a bank with investments in real estate ventures reports real estate (other than bank premises) owned or controlled by the bank and its consolidated subsidiaries that is held for investment purposes as a component of ''Other real estate owned'' in Schedule RC–M, item 3.a. If a bank has investments in real estate ventures in the form of investments in subsidiaries that have not been consolidated; associated companies; and corporate

joint ventures, unincorporated joint ventures, general partnerships, and limited partnerships over which the bank exercises significant influence that are engaged in the holding of real estate for investment purposes, these investments are reported as a component of ''Investments in unconsolidated subsidiaries and associated companies'' in Schedule RC–M, item 4.a. To better distinguish a bank's investments in real estate ventures from these other categories of assets, particularly because ''Other real estate owned'' also includes real estate acquired either through foreclosure or in any other manner for debts previously contracted, which presents different supervisory considerations than real estate investments, the agencies are proposing to add a new asset category to the Call Report balance sheet (Schedule RC) for investments in real estate ventures. This new balance sheet category would include those investments in real estate ventures that are currently reported as part of ''Other real estate owned'' and ''Investments in unconsolidated subsidiaries and associated companies.'' By making this change, the agencies would be able to eliminate item 3.a and items 4.a through 4.c from Schedule RC–M.

J. Revisions to Schedule RC–H for Securities Held in Domestic Offices

Information reported by banks with foreign offices on Schedule RC–H, Selected Balance Sheet Items for Domestic Offices, on the FFIEC 031 report form is fundamental for public policy purposes in the measurement and analysis of the domestic (U.S.) banking system. The agencies have used estimates of certain domestic office measures to facilitate these public policy efforts. However, the agencies have determined that enhanced information on available-for-sale and held-to-maturity securities in domestic offices is necessary to accomplish these public policy efforts.

At present, banks with foreign offices report the combined amortized (historical) cost of available-for-sale and held-to-maturity securities by type of security in items 10 through 17 of Schedule RC–H. The agencies propose to replace this combined reporting with two columns to collect information separately on the fair value of available-for-sale securities and the amortized cost of held-to-maturity securities held in the domestic offices of banks with foreign offices.

After the transition to this Schedule RC–H revision, this proposed change should not result in significant additional ongoing reporting burden because banks are required to designate securities as either available-for-sale, held-to-maturity, or held for trading per FASB Statement No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, and to report the fair value and amortized cost of all available-for-sale and held-to-maturity securities by type of security in Call Report Schedule RC–B, Securities.

K. Trading Assets That Are Past Due or in Nonaccrual Status

The agencies have observed that banks are holding assets in the trading category for longer periods of time due to market and other factors. Some of these assets are exhibiting delinquency patterns similar to assets held outside of the trading account. Currently, the agencies do not distinguish past due and nonaccrual trading assets from other assets on Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The agencies propose to replace Schedule RC–N, item 9, for ''Debt securities and other assets'' that are past due 30 days or more or in nonaccrual status with two separate items: item 9.a, ''Trading assets,'' and item 9.b, ''All other assets (including available-for-sale and held-to-maturity securities).'' These items would follow the existing three-column breakdown on Schedule RC–N that banks utilize to report assets past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status. Item 9.a would include all assets held for trading purposes, including loans held for trading. Collection of this information will allow the agencies to better assess the quality of assets held for trading purposes, and generally enhance surveillance and examination planning efforts.

Also, the agencies propose to expand the scope of Schedule RC–D, Trading Assets, Memorandum item 3, ''Loans measured at fair value that are past due 90 days or more,'' to include loans held for trading and measured at fair value that are in nonaccrual status. This change would provide for more consistent treatment with the information that would be collected on Schedule RC–N and with the disclosure requirements in FASB Statement No. 159, The Fair Value Option for Financial Assets and Financial Liabilities.

L. Enhanced Information on Credit Derivatives

Effective for the March 2006 Call Report, the agencies revised the information collected on credit derivatives in Schedules RC–L, Derivatives and Off-Balance Sheet Items, and RC–R, Regulatory Capital, to gain a better understanding of the nature and trends of banks' credit derivative activities. Since that time, the volume of credit derivative activity in the banking industry, as measured by the notional amount of these contracts, has increased steadily, rising to an aggregate notional amount of $16.4 trillion as of March 31, 2008. The Call Report data indicate that the credit derivative activity in the industry is highly concentrated in banks with total assets in excess of $10 billion. For these banks, credit derivatives function as a risk mitigation tool for credit exposures in their operations as well as a financial product that is sold to third parties for risk management and other purposes.

The agencies' safety and soundness efforts continue to place emphasis on the role of credit derivatives in bank risk management practices. In addition, the agencies' monitoring of credit derivative activities at certain banks has identified differences in interpretation as to how credit derivatives are treated under the agencies' risk-based capital standards. To further the agencies' safety and soundness efforts concerning credit derivatives and to improve transparency in the treatment of credit derivatives for regulatory capital purposes, the agencies propose to revise the information pertaining to credit derivatives that is collected on Schedules RC–L, RC–N (Past Due and Nonaccrual Loans, Leases, and Other Assets), and RC–R.

In Schedule RC–L, item 7, ''Credit derivatives,'' the agencies propose to change the caption of column A from ''Guarantor'' to ''Sold Protection'' and the caption of column B from ''Beneficiary'' to ''Purchased Protection'' to eliminate confusion surrounding the meaning of ''Guarantor'' and ''Beneficiary'' that commonly occurs between the users and preparers of these data. The agencies also propose to add a new item 7.c to Schedule RC–L to collect information on the notional amount of credit derivatives by regulatory capital treatment. For credit derivatives that are subject to the agencies' market risk capital standards, the agencies propose to collect the notional amount of sold protection and the amount of purchased protection. For all other credit derivatives, the agencies propose to collect the notional amount of sold protection, the notional amount of purchased protection that is recognized as a guarantee under the risk-based capital guidelines, and the notional amount of purchased protection that is not recognized as a guarantee under the risk-based capital standards.

The agencies also propose to add a new item 7.d to Schedule RC–L to collect information on the notional amount of credit derivatives by credit rating and remaining maturity. The item would collect the notional amount of sold protection broken down by credit ratings of investment grade and subinvestment grade for the underlying reference asset and by remaining maturities of one year or less, over one year through five years, and over five years. The same information would be collected for purchased protection.

In Schedule RC–N, the agencies propose to change the scope of Memorandum item 6, ''Past due interest rate, foreign exchange rate, and other commodity and equity contracts,'' to include credit derivatives. The fair value of credit derivatives where the bank has purchased protection increased significantly to over $500 billion at March 31, 2008, as compared to a negative $10 billion at March 31, 2007. Thus, the performance of credit derivative counterparties has increased in importance. The expanded scope of Memorandum item 6 on Schedule RC–N would include the fair value of credit derivatives carried as assets that are past due 30 through 89 days and past due 90 days or more.

In Schedule RC–R, the agencies propose to change the scope of the information collected in Memorandum items 2.g.(1) and (2) on the notional principal amounts of ''Credit derivative contracts'' that are subject to risk-based capital requirements to include only (a) the notional principal amount of purchased protection that is defined as a covered position under the market risk capital guidelines and (b) the notional principal amount of purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The scope of Memorandum item 1, ''Current credit exposure across all derivative contracts covered by the risk-based capital standards,'' would be similarly revised to include the current credit exposure arising from credit derivative contracts that represent (a) purchased protection that is defined as a covered position under the market risk capital guidelines and (b) purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The agencies also propose to add new Memorandum items 3.a and 3.b to Schedule RC–R to collect the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Consistent with the information currently reported in Memorandum item 2.g, the agencies propose to collect this present value information with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset and with the same three remaining maturity breakouts.

M. Questions Concerning Certain Trust, Custodial, Safekeeping, and Other Services

Under certain circumstances, banks can serve as trustee or custodian for Individual Retirement Accounts (IRAs), Health Savings Accounts (HSAs), and other similar accounts without obtaining trust powers. Banks may also provide custody, safekeeping, or other services involving the acceptance of orders for the sale or purchase of securities regardless of whether they have trust powers. Under the Board's and the SEC's recently adopted Regulation R—Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934 (12 CFR part 218), a bank will only be able to effect securities transactions for customers if the bank meets one of the exceptions from the broker definition in section 3(a)(4) of the Securities Exchange Act of 1934. Under the trust and fiduciary exception, the securities transactions must be effected in a trust department or other department of a bank that is regularly examined for compliance with fiduciary standards.

Accordingly, the agencies must be able to identify banks that serve as trustee or custodian for IRAs, HSAs, and other similar accounts or provide custody, safekeeping, or other services involving the acceptance of securities sale or purchase orders. Depending on whether such banks exercise trust powers, these activities will need to be examined during trust examinations or other examinations, as appropriate, in order to ensure that the activities are conducted in a satisfactory manner and in compliance with the requirements for the exception from the broker definition. Therefore, the agencies are proposing to add two yes/no questions to Schedule RC–M, one of which would ask each bank whether it acts as trustee or custodian for IRAs, HSAs, and other similar accounts and the other of which would ask whether the bank provides custody, safekeeping, or other services involving the acceptance of securities sale and purchase orders.

IV. Discussion of Revisions Proposed for December 2009

Schedule RC–T, Fiduciary and Related Services, was added to the Call Report effective December 31, 2001, replacing two separate reports, the Annual Report of Trust Assets (FFIEC 001) and the Annual Report of International Fiduciary Activities (FFIEC 006). Schedule RC–T collects data on:

- Fiduciary and related assets by type of fiduciary account, with the amount of assets and number of accounts reported separately for managed and non-managed accounts;
- Fiduciary and related services income by type of fiduciary account and expenses, including fiduciary settlements, surcharges, and other losses by type of fiduciary account;
- Managed assets held in personal trust and agency accounts by type of asset;
- Corporate trust and agency accounts; and
- The number of collective investment funds and common trust funds and the market value of fund assets by type of fund.

FDIC-insured banks that exercise fiduciary powers and have fiduciary assets or accounts and uninsured limited-purpose national trust banks (trust institutions) must complete specified sections of Schedule RC–T either quarterly or annually (as of December 31) depending on the amount of their total fiduciary assets as of the preceding calendar year-end and their gross fiduciary and related services income for the preceding calendar year. Approximately 400 trust institutions with total fiduciary assets greater than $250 million or with gross fiduciary and related services income greater than 10 percent of net interest income plus noninterest income report their fiduciary and related assets and their fiduciary and related services income quarterly and the remaining data items on Schedule RC–T annually. Around 200 trust institutions with total fiduciary assets greater than $100 million but less than or equal to $250 million that do not meet the fiduciary income test mentioned above complete all of Schedule RC–T annually. About 1,000 trust institutions with total fiduciary assets of $100 million or less that do not meet the fiduciary income test mentioned above must complete all of Schedule RC–T annually except the sections on fiduciary income and losses from which they are exempt.

Since its addition to the Call Report at year-end 2001, Schedule RC–T has not been revised. During this time period, significant growth has occurred in both the assets in managed and non-managed fiduciary accounts at trust institutions. For the five year period ending December 31, 2007, managed assets increased from $3.3 trillion to

$5.6 trillion while non-managed assets climbed from $8.2 trillion to $17.7 trillion. Assets held in custody and safekeeping accounts grew from $21.4 trillion to $57.9 trillion over this same period. The number of corporate and municipal debt issues for which trust institutions serve as trustee has also increased over the past five years, rising from 237 thousand to 339 thousand, and the total par value of these debt issues has increased from $6.4 trillion to $15.7 trillion. The total market value of the assets held in collective investment funds and common trust funds operated by trust institutions grew from $1.6 trillion at year-end 2002 to $3.0 trillion at year-end 2007.

The agencies have been monitoring the growth in fiduciary activities and trends in this area, both from data collected in Schedule RC–T and through the examination process, and have determined that certain data should be added to Schedule RC–T to enable the agencies to better evaluate the trust activities of individual trust institutions and the industry as a whole. The agencies are proposing to implement the following revisions to Schedule RC–T as of December 31, 2009.

A. Institutional Foundations and Endowments

In both the Fiduciary and Related Assets section of Schedule RC–T and the Fiduciary and Related Services Income section of the schedule, information on the assets, number of accounts, and income from fiduciary accounts of institutional foundations and endowments is currently reported as part of the total amounts reported for ''Other fiduciary accounts.'' Internal Revenue Service (IRS) statistics for 2004, the most recent year for which data are available, indicated that foundations and charitable trusts treated as foundations by the IRS held assets with a total book value of $451 billion.[11] The agencies believe that trust institutions administer a substantial amount of these assets and that foundations and endowments are a major type of fiduciary account being aggregated as a component of ''Other fiduciary accounts.'' Given the volume of assets administered in accounts for foundations and endowments, separate reporting in Schedule RC–T of data for such a significant type of fiduciary account is warranted.

B. Investment Advisory Agency Accounts

Investment advisory agency accounts are accounts for which a trust institution provides investment advice for a fee, but where the ultimate investment decision rests with the customer. At present, the instructions for reporting in both the Fiduciary and Related Assets section of Schedule RC–T and the Fiduciary and Related Services Income section of the schedule do not identify the type of fiduciary account in which information on the assets, number of accounts, and income from investment advisory agency accounts should be reported. As a result, there is diversity in how trust institutions report this information in these two sections of Schedule RC–T.

Investment management agency accounts share a common characteristic with investment advisory agency accounts in that both involve the provision of investment advice to a customer for the purpose of determining which securities to buy, sell, or hold. However, the former is a type of managed account while the latter is a type of non-managed account. In order to clarify where investment advisory agency accounts should be reported in Schedule RC–T and include them with the most appropriate type of fiduciary account given their characteristics, the agencies are proposing that investment advisory agency accounts be reported with investment management agency accounts in the Fiduciary and Related Assets and the Fiduciary and Related Services Income sections of Schedule RC–T. The line item captions in these two sections for ''Investment management agency accounts'' would be revised to read ''Investment management and investment advisory agency accounts.'' In addition, given the non-managed nature of investment advisory agency accounts, the currently blocked items for non-managed assets and number of non-managed accounts in the line for investment management agency accounts in the Fiduciary and Related Assets section of Schedule RC–T would be opened to enable trust institutions to report on these advisory accounts.

C. IRAs, HSAs, and Other Similar Accounts

IRAs, HSAs, and other similar accounts represent a large category of individual benefit and other retirement-related accounts administered by trust institutions for which the agencies do not collect specific data. At present, data for these accounts is included in the totals reported for ''Other employee benefit and other retirement-related accounts'' and ''Custody and safekeeping accounts'' in the Fiduciary and Related Assets section of Schedule RC–T (items 7.c and 13). As of year-end 2007, assets held in IRAs were estimated to be $4.7 trillion.[12]

Significant growth in IRAs administered by trust institutions is expected as retiring individuals roll assets held in 401(k) plans over into IRAs. Significant growth in HSAs is also anticipated as these accounts gain increased popularity with the public. IRAs, HSAs, and other similar accounts for individuals have risk characteristics that differ from employee benefit plans that are covered by the Employee Retirement Income Security Act. In particular, the risks of these accounts for individuals tend to center on compliance with the relevant provisions of the Internal Revenue Code and the potential penalties for violations thereof. To identify trust institutions experiencing significant changes in the number and market value of assets of these types of accounts for supervisory follow-up and to monitor both aggregate and individual trust institution growth trends involving these accounts, the agencies are proposing to add a line item to the Fiduciary and Related Assets section of Schedule RC–T for data on IRAs, HSAs, and other similar accounts included in ''Other employee benefit and other retirement-related accounts'' and ''Custody and safekeeping accounts.''

D. Managed Assets Held in Fiduciary Accounts

Trust institutions currently report a breakdown of the market value of managed assets held in personal trust and agency accounts by type of asset in Memorandum item 1 of Schedule RC–T. The agencies do not collect a similar breakdown of the managed assets for other types of fiduciary accounts. The exercise of investment discretion adds a significant element of risk to the administration of managed fiduciary accounts. Therefore, it is essential that the agencies be able to monitor trends, both on a trust industry-wide basis and an individual trust institution basis, in how discretionary fiduciaries are investing the assets of managed accounts. The current scope of managed assets reporting is inadequate for monitoring and measuring risk exposures and provides inadequate information for examiners' examination planning activities.

Despite the importance of such data, managed personal trust and agency

[11] http://www.irs.gov/taxstats/charitablestats/article/0,,id=96996,00.html.

[12] http://www.icifactbook.org/fb_sec7.html.

accounts comprised just 20 percent of the number of total managed accounts and the assets of managed personal trust and agency accounts represented 18 percent of total managed assets as of December 31, 2007. By comparison, as of the same date, investment management agency accounts comprise 66 percent of the number of total managed accounts and the assets of investment management agency accounts represented 36 percent of total managed assets, while the assets of employee benefit and other retirement accounts comprised 41 percent of total managed assets.

In order to close the significant data gap in current reporting, the agencies are proposing to expand Memorandum item 1 of Schedule RC-T to collect a three-way breakdown of the market value of all managed assets held in fiduciary accounts by type of asset. The market values for the various asset types would be reported separately for three categories of managed fiduciary accounts: (1) Personal trust and agency and investment management agency accounts, (2) employee benefit and other retirement accounts, and (3) all other accounts. The various types of fiduciary accounts have been combined into these three categories since each category is subject to unique regulatory and fiduciary standards. Data reported in this manner will assist in monitoring and measuring risk at trust institutions and in pre-examination planning by examiners.

The agencies have also reviewed the types of assets for which trust institutions currently provide a breakdown in Memorandum item 1. In this regard, discretionary investments in common trust funds (CTFs) and collective investment funds (CIFs) are not separately reported in this Memorandum item. Instead, trust institutions are required to allocate the underlying assets of each CTF and CIF attributable to managed accounts to the individual line items for the various types of assets reported in Memorandum item 1.

The agencies have found this method of reporting investments in CTFs and CIFs to be misleading, confusing, and burdensome for trust institutions. It is misleading because an investment in a CTF or CIF that invests in common stocks is very different in nature than a direct investment in an individual common stock, but these investments are reported as if the institution were investing in a specific asset, rather than in a fund. It is confusing and burdensome to reporting institutions that often do not understand the allocation process currently required for reporting the value of the underlying assets of the CTFs and CIFs.

This allocation process requires institutions to segregate the underlying assets of each CTF and CIF by asset type, rather than following the more straightforward approach of reporting the total value of managed accounts' holdings of investments in CTFs and CIFs. Therefore, the agencies are proposing to end the current method of reporting investments in CTFs and CIFs in Memorandum item 1 by adding a separate line item for investments in CTFs and CIFs. This new asset type will enable the agencies to collect data that actually reflects the investment choices of discretionary fiduciaries, i.e., investing in a fund rather than an individual asset, while simplifying the reporting of these investments by eliminating the requirement to report each type of asset held by a fund.

At present, the asset type for ''common and preferred stocks'' in Memorandum item 1 includes not only these stocks, but also all investments in mutual funds (other than money market mutual funds, which are reported separately), private equity investments, and investments in unregistered and hedge funds. Investments in mutual funds (other than money market mutual funds) have long been reported with common and preferred stocks. However, over time, these investments have gone from being a relatively minor investment option for managed fiduciary accounts to being one of the most significant asset types for managed fiduciary accounts.

As a consequence, the agencies lack specific data on discretionary investments in mutual funds (other than money market mutual funds) despite their distinctive differences from investments in individual common stocks. Given these differences and the growth in mutual fund holdings in managed fiduciary accounts, the agencies are proposing to add two new items to Memorandum item 1 to collect data on investments in equity mutual funds and in other (non-money market) mutual funds separately from common and preferred stocks.

Investments in hedge funds and private equity have grown rapidly since the implementation of Schedule RC–T in 2001, with large institutional investors, e.g., large pension plans, increasing their allocation to these types on investments in order to increase portfolio returns and pursue absolute return strategies. As mentioned above, these types of investments are currently reported in the ''common and preferred stocks'' asset type in Memorandum item 1. However, given their unique characteristics and risks and the increasing role such investments are having in managed fiduciary portfolios, the agencies believe there is a need to identify the volume of these investments to monitor both aggregate trust industry exposure and trust institution-specific exposure. Therefore, the agencies are also proposing to modify Memorandum item 1 by adding a new item in which trust institutions would report investments in unregistered funds and private equity investments held in managed accounts separately from common and preferred stocks.

Finally, since their inception in 1994, mutual funds for which the reporting trust institution or its subsidiary or affiliate is the sponsor or serves as an investment advisor (also referred to as proprietary mutual funds) have posed a significant fiduciary risk when the institution makes investments in such mutual funds for the fiduciary accounts it manages. In this situation, the institution's dual roles present a conflict of interest, which has given rise to litigation on a number of occasions. Therefore, to supplement the proposed expanded information on mutual funds held in managed fiduciary accounts, the agencies are proposing to add items to Memorandum item 1 for the reporting of the market value of discretionary investments in proprietary mutual funds and the number of managed accounts holding such investments. This information will assist the agencies in measuring and monitoring the risk exposure of the trust industry and individual trust institutions with respect to the conflicts of interest inherent in discretionary investments in proprietary mutual funds.

E. Corporate Trust and Agency Accounts

Trust institutions currently report the number of corporate and municipal debt issues for which the institution serves as trustee and the outstanding principal amount of these debt issues in Memorandum item 2.a of Schedule RC–T. One of the major risks in the area of corporate trust administration involves debt issues that are in substantive default. A substantive default occurs when the issuer fails to make a required payment of interest or principal, defaults on a required payment into a sinking fund, or is declared bankrupt or insolvent.

The occurrence of a substantive default significantly raises the risk profile for an indenture trustee of a defaulted issue. In such cases, every action or failure to act by the trustee is scrutinized intensely by the holders of

the defaulted issue, which brings about a heightened risk of being sued. In addition, the administrative demands in such a situation can result in the incurrence of significant expenses and the distraction of managerial time and attention from other areas of the trust department. Thus, to monitor and better understand the risk profile of trust institutions serving as an indenture trustee for debt securities and changes therein, the agencies are proposing to require trust institutions to report the number of such issues that are in substantive default and the principal amount outstanding for these issues.

In addition, the agencies are proposing to revise the instructions for reporting on corporate trust accounts to state that issues of trust preferred stock for which the institution is trustee should be included in the amounts reported for corporate and municipal trusteeships.

F. Instructional Clarifications

The instructions for reporting the managed and non-managed assets and number of managed and non-managed accounts for defined contribution plans and defined benefit plans in items 5.a and 5.b of Schedule RC–T, respectively, would be revised to indicate that employee benefit accounts for which the trust institution serves as a directed trustee should be reported as non-managed accounts.

The instructions for reporting on the number of and market value of assets held in collective investment funds and common trust funds in Memorandum item 3 would be clarified by stating that the number of funds should be reported, not the number of assets held by these funds, the number of participants, or the number of accounts invested in the funds.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: September 17, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 17, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 16th day of September 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–22258 Filed 9–22–08; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of guidelines.

SUMMARY: On September 16, 2008, the Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board) adopted revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines). The revisions to the Guidelines were adopted to better align the FDIC's Supervisory Appeals Review Committee (SARC) process with the material supervisory determinations appeals procedures at the other Federal banking agencies. The amendments modify the supervisory determinations eligible for appeal to eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC with respect to determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related action or decision, including the initiation of an investigation and the referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for apparent violations of the Equal Credit Opportunity Act or the Fair Housing Act. The amendments also include limited technical amendments. The revised Guidelines are effective upon adoption.

DATES: The Guidelines became effective on September 16, 2008.

FOR FURTHER INFORMATION CONTACT: Frank Gray, Section Chief, FDIC, 550 17th Street, NW., Washington, DC 20429 [F–4054]; on detail; *telephone:* (678) 916–2200; or *electronic mail: fgray@fdic.gov;* Patricia A. Colohan, Section Chief, FDIC, 550 17th Street, NW., Washington, DC 20429 [F–4080]; *telephone:* (202) 898–7283; or *electronic mail: pcolohan@fdic.gov;* or Richard Bogue, Counsel, FDIC, 550 17th Street, NW., Washington, DC 20429 [MB–3014]; *telephone:* (202) 898–3726; *facsimile:* (202) 898–3658; *or electronic mail: rbogue@fdic.gov.*

SUPPLEMENTARY INFORMATION: On May 27, 2008, the FDIC published in the **Federal Register**, for a 60-day comment period, a notice and request for comments respecting the proposed revisions to the Guidelines for Appeals of Material Supervisory Determinations. (73 FR 30393). The comment period closed July 28, 2008. The FDIC considered it desirable in this instance to garner comments regarding the Guidelines, although notice and comment rulemaking was not required and need not be employed should the FDIC make future amendments.

The FDIC received five comment letters in total from one depository institution, three banking associations, and one lawyer on behalf of interested clients, all of whom opposed the proposed revisions. The comments received, and FDIC's responses, are summarized below.

Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act), required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration Board (NCUA)) to establish an independent intra-agency appellate process to review material supervisory determinations. The Riegle Act defines the term ''independent appellate process'' to mean a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review. In the appeals process, the FDIC is required to ensure that (1) an appeal of a material supervisory determination by an insured depository institution is heard and decided expeditiously; and (2) appropriate safeguards exist for

protecting appellants from retaliation by agency examiners.

The term ''material supervisory determinations'' is defined in the Riegle Act to include determinations relating to: (1) Examination ratings; (2) the adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant to an institution. The Riegle Act specifically excludes from the definition of ''material supervisory determinations'' a decision to appoint a conservator or receiver for an insured depository institution or to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1831o. Finally, section 309(g) (12 U.S.C. 4806(g)) expressly provides that the Riegle Act's requirement to establish an appeals process shall not affect the authority of the Federal banking agencies to take enforcement or supervisory actions against an institution.

On March 21, 1995, the FDIC's Board of Directors adopted the original Guidelines for Appeals of Material Supervisory Determinations, which established and set forth procedures governing the SARC, whose purpose was to consider and decide appeals of material supervisory determinations as required by the Riegle Act.

On March 18, 2004, the FDIC published in the **Federal Register**, for a 30-day comment period, a notice and request for comments respecting proposed revisions to the Guidelines. (69 FR 12855). On July 9, 2004, the FDIC published in the **Federal Register** a notice of guidelines which, effective June 28, 2004, adopted the revised Guidelines changing the composition and procedures of the SARC. (69 FR 41479). The revised Guidelines were disseminated to FDIC-supervised financial institutions through a Financial Institution Letter, FIL–113–2004, issued October 13, 2004.

Comments Filed in Response to the May 27, 2008 Federal Register Notice

One comment was filed by a bank. That bank opposes the proposed amendments. Stating that there ''needs to be an effective and non-biased appeals process for banks,'' and concludes that the proposal ''to further reduce the * * * ability, to appeal FDIC supervisory determinations is completely over-reaching, and should not be enacted into law.''

One of the trade groups that oppose the proposed amendments believes that the FDIC's original decision to allow appeals of underlying determinations was the correct interpretation of the Riegle Act and ''helps assure banks of fundamental fairness and due process in connection with material supervisory determinations made by the FDIC.'' The WBA asserts that ''there is no requirement under the Riegle Act that the FDIC march in lock step with the other Federal Banking Agencies regarding the appeals process,'' and that the proposed amendments are unnecessary and would ''remove one of the few efficient opportunities available to banks for an independent review of those underlying facts and circumstances that exist at the time of an examination.''

Another trade group opposes the proposed amendments while advocating an increased role for the FDIC Ombudsman in the appeals process. This group states that ''independent review of the underlying facts, circumstances, and determinations is necessary to preserve the integrity of the regulatory system and perceived fairness of the process while maintaining a necessary level of accountability.'' This group believes that ''the proposed changes would reduce opportunities to resolve issues in a constructive manner at a time of increasing need for such opportunities.'' ''It will diminish the utility of appeals processes and force more disputes to be resolved through an adversarial enforcement process.'' This group advocates changes to the appeals process ''that vest the FDIC Ombudsman with more authority to resolve disputes through comparatively quick and inexpensive informal appeals.''

A third trade group also opposes the proposed changes and argues for an increased role for the FDIC Ombudsman. This group supports an FDIC appeals process that is ''generally unrestricted in scope,'' so long as ''the appellate process does not get overloaded or interfere with the FDIC's ability to bring formal or informal enforcement actions.'' This group believes that the FDIC has failed to justify the proposed changes and argues that the proposed changes would ''unnecessarily restrict and complicate the SARC process and further discourage bankers from filing appeals.'' This group also recommends that the FDIC consider ways to further involve the FDIC Ombudsman in the SARC appeals process which ''would make the process more impartial and user friendly, and could encourage banks to pursue appeals.''

The lawyer opposes the proposed changes advocating that the current process works well and the industry needs more opportunities for informal review.

The commenters uniformly expressed support for an independent review of underlying facts, circumstances, and determinations, and that there needs to be ''an effective and non-biased appeals procedure for banks.'' We believe that the numerous informal exchanges of views between banks and the FDIC in the supervisory process prior to pursuit of any enforcement action, plus the numerous reviews of proposed enforcement actions prior to their initiation ensure the independent and impartial review advocated by the commenters. In addition, the administrative hearing process and the right to court review of final enforcement orders have uniformly been found to provide all required due process.

The bank comment states that ''making changes based on the anti-bank mentality of other agencies should never be grounds for the FDIC to further reduce the rights of the banks it supervises,'' and one of the trade groups noted that the FDIC is not required to ''march in lock step'' with the other banking agencies. The interpretation of the Riegle Act requirements by the other agencies is not being used to support a reduction in rights of FDIC-supervised banks, but rather supports the conclusion that the Riegle Act never required review of determinations underlying formal enforcement-related actions in the first instance. In the absence of such a requirement, substantial uniformity among the various banking agencies promoting equal treatment of all banks and thrifts appealing material supervisory determinations is a desirable goal which is served by the final amendments adopted herein.

Proposals for an increased role for the FDIC Ombudsman in the supervisory appeals process have been advanced by several organizations, including trade association commenters here, for a number of years. These proposals have been considered and have been consistently rejected by the FDIC because a decisional role for the Ombudsman would potentially conflict with the Ombudsman's statutory mandate as an independent liaison with aggrieved institutions. Given this, and that this portion of the comments in substance suggest an alternative to the SARC procedures, the recommended change is not warranted.

Proposed Amendments

I. Amendment of Determinations Eligible for Review

Determinations underlying enforcement actions, such as the

citation of apparent violations of law or regulation, have been appealable under the FDIC's Guidelines since their adoption in 1995. The final amendments to the Guidelines eliminate the ability of an FDIC-supervised institution to file an appeal with the SARC with respect to determinations or the facts and circumstances underlying a recommended or pending formal enforcement-related actions or decisions, including the initiation of a formal investigation and the referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for apparent violations of the Equal Credit Opportunity Act or the Fair Housing Act. The final amendments to the Guidelines satisfy the requirements of the Riegle Act and better align the FDIC's material supervisory determination appeals procedures with those of the other Federal banking agencies.

A. Independent Review Requirement

Section 309(a) of the Riegle Act required the FDIC to establish an appellate process to review material supervisory determinations. The SARC must make its decision based on ''facts of record,'' which are limited to the Report of Examination, the FDIC-supervised institution's appeal, an FDIC staff response, and, in some cases, a brief oral presentation before the SARC. The SARC appeals process does not involve any further factual development through discovery.

Decisions to proceed with a formal enforcement action, on the other hand, must be supported by facts demonstrating both the existence of the violation at issue as well as facts that satisfy all of the required elements of the enforcement action to be pursued. All FDIC formal enforcement actions are reviewed by a number of high-level FDIC officials both prior and subsequent to their initiation. Ultimately, the FDIC Board of Directors (the Board) decides the outcome of any contested enforcement action and that decision is fully supported by a factual record compiled through investigation, discovery, and an administrative hearing held before an impartial administrative law judge who makes findings of facts, conclusions of law and recommends a decision to the Board.

The FDIC's current procedures for initiating formal enforcement actions ensure review of material supervisory determinations that underlie those enforcement actions by impartial, high-level FDIC officials. Thus, there is no legal requirement or other need for determinations underlying formal enforcement-related actions to be separately reviewable by the SARC.

B. Parity With Other Federal Agencies

As previously noted, the Riegle Act required all of the Federal banking agencies and the NCUA to establish appellate processes to review material supervisory determinations. While the various appellate processes adopted by the Federal banking agencies differ in substance and procedure, no Federal banking agency, other than the FDIC, expressly allows review of determinations that underlie formal enforcement actions.

OCC Bulletin 2002–9, National Bank Appeals Procedures (February 25, 2002) (OCC Guidelines), exempts from its definition of appealable matters ''any formal enforcement-related actions or decisions, including decisions to: (a) Seek the issuance of a formal agreement or cease and desist order, or the assessment of a civil money penalty pursuant to Section 8 of the [FDI Act] * * * and (d) commence formal investigations pursuant to 12 U.S.C. 481, 1818(n) and 1820(c)[.]'' Additionally, the OCC Guidelines define the term ''formal enforcement-related actions or decisions'' as including ''the underlying facts that form the basis of a recommended or pending formal enforcement action, the acts or practices that are subject of a pending formal enforcement act, and OCC determinations regarding compliance with an existing formal enforcement action.''

The supervisory determinations that may be reviewed on appeal by the OTS, as defined by Thrift Bulletin TB 68a (June 10, 2004), do not include decisions relating to ''formal enforcement-related action'' such as ''[i]nitiating a formal investigation[,]'' ''[f]iling a notice of charges[,]'' and ''[a]ssessing civil money penalties.''

During the adoption of its internal appeals process, the Board of Governors of the Federal Reserve System (Federal Reserve) specifically rejected a suggestion received through comment that institutions consenting to the issuance of a formal enforcement action, such as a cease and desist order, be allowed to use the internal appeals process to challenge the material supervisory determinations that led to the enforcement action. The Federal Reserve found this suggestion to be inconsistent with the intent of the Riegle Act, which was to ''provide an avenue for the review of material supervisory determinations and not contest enforcement actions for which an alternative appeals mechanism exits.'' (60 *FR* 16472, March 30, 1995).

The National Credit Union Association (NCUA) limits the type of determinations eligible for review under its appeals process to the specific determinations expressly stated in the Riegle Act. (60 FR 14795, March 20, 1995).

C. Notice of Enforcement-Related Action or Decision

At present, only the OCC's Guidelines explicitly provide that a decision to pursue a formal enforcement action will cut off rights to file a material supervisory determination appeal. In this regard, OCC Bulletin 2002–9 states that a formal enforcement-related action or decision ''commences when a Supervision Review Committee determines that the OCC will pursue a formal action,'' at which time the matter becomes unappealable. The OCC has Supervision Review Committees at both the Regional and Washington offices with delegations of authority to initiate different types of formal enforcement actions. The FDIC structure of enforcement matter decision-making is different, generally vesting authority to initiate formal enforcement actions in designated DSC officials, and in some cases following oversight by the Case Review Committee in Washington.

The essence of the OCC's cut-off point is that a decision has been made by appropriately authorized officials that a formal enforcement action will be pursued. In order to mirror the cut-off point as closely as possible, the final amendments establish the FDIC's cut-off point as the date when ''the FDIC initiates a formal investigation * * * or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies * * *, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for apparent violations of the Equal Credit Opportunity Act or the Fair Housing Act.'' [1] Operational procedures will be established that provide that when an FDIC official with authority to initiate a formal enforcement action decides that the facts and circumstances then known warrant initiation of such action, a letter to the bank will be sent notifying the bank of the decision to pursue formal

[1] When the OCC determines that there is reason to believe an instance or pattern or practice of discrimination exists that will result in either a referral to the Department of Justice or notification to the Department of Housing and Urban Development, the appropriate senior deputy comptroller will provide written notice to the bank of this finding. National banks may file an appeal to the ombudsman for reconsideration of this decision within 15 calendar days of the date of this letter.

action. Such notice will render the underlying facts and circumstances that form the basis of the enforcement action unappealable.

II. Additional Technical Amendments

Paragraph C of the Guidelines (Institutions Eligible to Appeal) stated that the Guidelines apply to insured depository institutions that the FDIC supervises ''(i.e., insured State nonmember banks (except District banks) and insured branches of foreign banks).'' The 2004 District of Columbia Omnibus Authorization Act, Public Law No. 108–386, § 8, extended to the FDIC regulatory and supervisory authority over District of Columbia banks. Consequently, the parenthetical ''except District banks'' has been stricken from Paragraph C of the Guidelines.

Paragraph D of the Guidelines (Determinations Subject to Appeal), at subsection (b), permitted the appeal of ''EDP ratings.'' The current equivalent is ''IT ratings,'' and the substitution is made in the Paragraph D.

Paragraph G of the Guidelines (Appeal to the SARC) provided that the Director of the Division of Supervision and Consumer Protection may, with the approval of the SARC Chairperson, transfer a request for review directly to the SARC if the Director determines that the institution is entitled to relief that the Director lacks delegated authority to grant. This provision expedites the SARC process by eliminating the need for the Division Director to deny relief to an institution to enable it to file its appeal to the SARC. In order to further facilitate the prompt resolution of requests for review, a mechanism through which the Division Director may seek guidance from the SARC Chairperson has been added to Paragraph G. The addition to Paragraph G reads: ''The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.''

Paragraph N of the Guidelines (Publication of Decisions) provided that SARC decisions will be published, and that published decisions will be redacted to avoid disclosure of exempt information. Because there are circumstances where no amount of redaction of the full-text SARC decision would be sufficient to prevent improper disclosure, while at the same time providing a meaningful statement of what the SARC decided, Paragraph N has been revised to state that: ''In cases where redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form.''

* * * * *

Proposed Amended Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325, 108 Stat. 2160) (''Riegle Act'') required the Federal Deposit Insurance Corporation (''FDIC'') to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (''guidelines'') describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (''SARC'').

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel is a non-voting member of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize the most senior member of his or her staff within the substantive area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible To Appeal

The guidelines apply to the insured depository institutions that the FDIC supervises (i.e., insured State nonmember banks and insured branches of foreign banks) and also to other insured depository institutions with respect to which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these guidelines. Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Interagency Rating System for Data Processing Operations;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the adequacy of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceed 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a Request for Reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the FDI Act (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the DSC Director, Deputy Director or Associate Director; and

(n) Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution.

Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution;

(b) Decisions to take prompt corrective action pursuant to section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations);

(d) Decisions to initiate informal enforcement actions (such as memoranda of understanding); and

(e) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action, and FDIC determinations regarding compliance with an existing formal enforcement action.

A formal enforcement-related action or decision commences, and therefore becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) or provides written notice to the bank indicating its intention to pursue available formal enforcement remedies under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General or a notice to the Secretary of Housing and Urban Development for apparent violations of the Equal Credit Opportunity Act or the Fair Housing Act. For the purposes of these guidelines, remarks in a Report of Examination do not constitute written notice of intent to pursue formal enforcement remedies.

E. Good Faith Resolution

An institution should make a good faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and/or the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the Division of Supervision and Consumer Protection or an appeal to the SARC under these guidelines.

F. Filing a Request for Review With the FDIC Division of Supervision and Consumer Protection

An institution may file a request for review of a material supervisory determination with the Director, Division of Supervision and Consumer Protection, 550 17th Street, NW., Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination containing a material supervisory determination or other written communication of a material supervisory determination. A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority), how resolution of the dispute would materially affect the institution, and whether a good faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors has considered the merits of the request and authorized that it be filed.

The Director, Division of Supervision and Consumer Protection, will issue a written determination of the request for review, setting forth the grounds for that determination, within 30 days of receipt of the request. No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the Division of Supervision and Consumer Protection.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Director of the Division of Supervision and Consumer Protection must appeal that determination to the SARC within 30 calendar days from the date of that determination. The Director's determination will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC. If the Director of the Division of Supervision and Consumer Protection determines that an institution is entitled to relief that the Director lacks delegated authority to grant, the Director may, with the approval of the Chairperson of the SARC, transfer the matter directly to the SARC without issuing a determination. Notice of such a transfer will be provided to the institution. The Division Director may also request guidance from the SARC Chairperson as to procedural or other questions relating to any request for review.

H. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days from the date of the division director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. If the 30th day after the date of the division director's written determination is a Saturday, Sunday or Federal holiday, filing may be made on the next business day. The appeal should be sent to the address indicated on the determination being appealed.

I. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the determination being appealed. If oral presentation is sought, that request should be included in the appeal. Only matters previously reviewed at the division level, resulting in a written determination or direct referral to the SARC, may be appealed to the SARC. Evidence not presented for review to the DSC Director may be submitted to the SARC only if authorized by the SARC Chairperson. The institution should set forth all of the reasons, legal and factual, why it disagrees with the determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

J. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

K. Oral Presentation

The SARC may, in its discretion, whether or not a request is made, determine to allow an oral presentation. The SARC generally grants a request for oral presentation only if it determines that oral presentation is likely to be helpful or would otherwise be in the public interest. Notice of the SARC's determination to grant or deny a request for oral presentation will be provided to the institution. If oral presentation is held, the institution will be allowed to present its positions on the issues raised in the appeal and to respond to any questions from the SARC. The SARC

may also require that FDIC staff participate as the SARC deems appropriate.

L. Dismissal and Withdrawal

An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal.

M. Scope of Review and Decision

The SARC will review the appeal for consistency with the policies, practices and mission of the FDIC and the overall reasonableness of and the support offered for the positions advanced, and notify the institution, in writing, of its decision concerning the disputed material supervisory determination(s) within 60 days from the date the appeal is filed, or within 60 days from oral presentation, if held. SARC review will be limited to the facts and circumstances as they existed prior to or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC may reconsider its decision only on a showing of an intervening change in the controlling law or the availability of material evidence not reasonably available when the decision was issued.

N. Publication of Decisions

SARC decisions will be published, and the published SARC decisions will be redacted to avoid disclosure of exempt information. In cases where redaction is deemed to be insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC.

O. SARC Guidelines Generally

Appeals to the SARC will be governed by these guidelines. The SARC will retain the discretion to waive any provision of the guidelines for good cause; the SARC may adopt supplemental rules governing SARC operations; the SARC may order that material be kept confidential; and the SARC may consolidate similar appeals.

P. Limitation on Agency Ombudsman

The subject matter of a material supervisory determination for which either an appeal to the SARC has been filed or a final SARC decision issued is not eligible for consideration by the Ombudsman.

Q. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, Division of Supervision and Consumer Protection, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State authority will be left to those parties to resolve.

R. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

S. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination which relates to or could affect the approval of the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

T. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 550 17th Street, Washington, DC 20429, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the Division of Supervision and Consumer Protection to resolve the allegation of retaliation.

For the reasons stated in the Preamble, the Board has adopted the Guidelines for Appeals of Material Supervisory Determinations as set forth above

By Order of the Board of Directors.

Dated at Washington, DC, the 17th day of September, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–22148 Filed 9–22–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 7, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Nicholas J. Burns, Jr., Almond, Wisconsin, to acquire additional votings shares of River Cities Bancshares, Inc., and thereby indirectly acquire additional voting shares of River Cities Bank, both of Wisconsin Rapids, Wisconsin.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Director, Regional and Community Bank Group)

101 Market Street, San Francisco, California 94105–1579:

1. Rommel R. Medina and Ruell R. Medina, both of San Bruno, California, to acquire additional voting shares of MNB Holdings Corporation, and thereby indirectly acquire additional voting shares of Mission National Bank, both of San Francisco, California.

Board of Governors of the Federal Reserve System, September 17, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–22114 Filed 9–22–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Glacier Bancorp, Inc., Kalispell, Montana, to acquire 100 percent of the voting shares of Bank of the San Juans Bancorporation, and thereby indirectly acquire voting shares of Bank of the San Juans, both of Durango, Colorado.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. CCB Financial Corporation, Kansas City, Missouri, to acquire 100 percent of the voting shares of NKC Bancshares, Inc., and thereby indirectly acquire voting shares of Norbank, both of North Kansas City, Missouri.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ST Financial Group, Inc., Montgomery, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of Snook Bancshares, Inc., and thereby indirectly acquire voting shares of First Bank of Snook, both of Snook, Texas.

Board of Governors of the Federal Reserve System, September 17, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–22113 Filed 9–22–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First National Bankers Bankshares, Inc., Baton Rouge, Louisiana, to merge with Arkansas Bankers Bancorporation, Inc., and thereby indirectly acquire Arkansas Bankers Bank, both of Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, September 18, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–22185 Filed 9–22–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–109]

Review of NIOSH Draft Current Intelligence Bulletin, ''A Strategy for Assigning the New NIOSH Skin Notations for Chemicals''

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Public Meeting and availability for Public Comment.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) is conducting a public review of the NIOSH document ''CIB: A Strategy for Assigning the New NIOSH Skin Notations for Chemicals.'' This draft Current Intelligence Bulletin (CIB) was developed to provide the scientific rationale and framework for a strategy for the assignment of multiple skin notations capable of distinguishing between systemic, localized, and sensitizing health effects of dermal chemical exposures. The strategy has

been designed to (1) communicate the current state of knowledge on hazards to workers' health from dermal exposures, (2) address the conceptual shortcomings of the current NIOSH skin notation represented by the symbol [skin], (3) recognize the health risks associated with contact of the skin with chemicals beyond dermal absorption, and (4) increase the transparency of the process for assigning the new NIOSH skin notations. The CIB can be found at: *http://www.cdc.gov/niosh/review/public/109*.

Public Meeting Time and Date: 9 a.m.–4 p.m. EDT, November 6, 2008.

Place: NIOSH, Robert A. Taft Laboratories, Taft Auditorium, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is open to the public, limited only by the space available (the room accommodates approximately 80 people). Due to limited space, notification of intent to attend the meeting must be made to the NIOSH Docket Officer, no later than October 22, 2008. The NIOSH Docket Officer can be reached at (513) 533–8611 or by e-mail at *niocindocket@cdc.gov*. Requests to attend the meeting will be accommodated on a first-come basis.

Non-U.S. Citizens: Because of CDC Security Regulations, any non-U.S. citizen wishing to attend this meeting must provide the following information in writing to the NIOSH Docket Officer at the address below no later than October 15, 2008.

1. Name:
2. Gender:
3. Date of Birth:
4. Place of Birth (city, province, state, country):
5. Citizenship:
6. Passport Number:
7. Date of Passport Issue:
8. Date of Passport Expiration:
9. Type of Visa:
10. U.S. Naturalization Number (if a naturalized citizen):
11. U.S. Naturalization Date (if a naturalized citizen):
12. Visitor's Organization:
13. Organization Address:
14. Organization Telephone Number:
15. Visitor's Position/Title within the Organization:

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained.

Purpose of the Meeting: To discuss and obtain comments on the draft CIB, ''A Strategy for Assigning the New NIOSH Skin Notations for Chemicals.'' Special emphasis will be placed on discussion of the following issues:

1. Are the proposed classes of skin notations appropriate?

2. Are the proposed criteria for assigning each type of skin notation appropriate?

3. Is the proposed assignment of multiple skin notations useful for protecting workers from dermal hazards?

4. Should the sensitizing effects (SEN) notation apply strictly to allergic contact dermatitis or is it appropriate to assign the SEN notation for other immune-mediate responses, such as respiratory sensitization, airway hyperactivity and mucosal inflammation, associated with dermal exposure to a compound?

5. Does the proposed harmonization scheme found in Appendix G.2 link the new NIOSH skin notations and The Globally Harmonized System of Classification and Labeling of Chemicals (GHS) assignments sufficiently?

6. Should additional information be included within document? If so, what?

7. Do the data cited support the objectives of the document?

8. Are the conclusions appropriate in light of the current understanding of the toxicological data?

This document may be found at: *http://www.cdc.gov/niosh/review/public/109/*.

Written comments may be submitted to the NIOSH Docket Officer, Robert A. Taft Laboratories, 4676 Columbia Parkway, M/S C–34, Cincinnati, OH 45226, telephone (513) 533–8611, facsimile (513) 533–8230. Comments may also be submitted via e-mail to *niocindocket@cdc.gov*. All electronic comments should be formatted as Microsoft Word. Comments must be submitted to NIOSH no later than November 7, 2008, and should reference docket number NIOSH–109 in the subject heading. Oral comments made at the public meeting must also be submitted to the docket in writing in order to be considered by the Agency.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Technical Information: Scott Dotson, Industrial Hygienist, NIOSH, CDC, telephone (513) 533–8540, M/S C–32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: September 15, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–22190 Filed 9–22–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0482]

Ophthalmic Balanced Salt Solutions for Ocular Surgical Procedures; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to take enforcement action against unapproved ophthalmic balanced salt solutions for irrigation of the eye during surgery and persons[1] who manufacture or cause the manufacture of such products or their shipment in interstate commerce. Unapproved ophthalmic balanced salt solutions have been associated with adverse events, some of them leading to permanent loss of visual acuity, because of contamination of the product or other product defects. Ophthalmic balanced salt solutions are new drugs that require approved applications because they are not generally recognized as safe and effective. Two firms have approved applications to market these products. Manufacturers who wish to market ophthalmic balanced salt solutions must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA).

DATES: This notice is effective September 23, 2008. For information about enforcement dates, see **SUPPLEMENTARY INFORMATION**, section III.B.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2008–N–0482 and directed to the appropriate office listed as follows:

Regarding applications under section 505(b) of Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)): Division of Anti-Infective and Ophthalmology Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

[1] A ''person'' includes individuals, partnerships, corporations, or associations (21 U.S.C. 321(e)).

Ave., Bldg. 22, Silver Spring, MD 20993–0002.

Regarding applications under section 505(j) of the act: Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

All other communications: Jennifer Devine, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5240, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Jennifer Devine, Office of Compliance, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 5240, Silver Spring, MD 20993–0002, 301–796–3347, e-mail: *Jennifer.Devine@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Ophthalmic balanced salt solutions are sterile, isotonic irrigating solutions used during surgical procedures on the eye. Prior to the 1960s, saline was the ophthalmic irrigating solution most commonly used to replace small amounts of intraocular fluid and wet the external eye. Balanced salt solutions for use during ocular surgery were developed in the 1960s to provide a temporary replacement for the aqueous humor, physiologically supporting the cornea until sufficient fluid is replaced by the ciliary body. These products enable the conduct of complex intraocular surgery techniques that require the replacement of large amounts of aqueous and vitreous humor. Some of the products marketed today are designed for use in surgical procedures of limited duration, while others are appropriate for use in procedures of any expected duration.

Two firms—Alcon Laboratories and Akorn, Inc. (Adorn),—have approved applications for ophthalmic balanced salt solutions. Alcon's approved products are marketed under the names BSS (NDA 20–742), intended for surgeries of under 60 minutes, and BSS-plus (NDA 18–469), intended for surgery of any expected duration. Akorn's approved products include Balanced Salt Solution (ANDA 75–503) and Endosol Extra (NDA 20–079). BSS, BSS-plus, and Endosol Extra have been designated as reference listed drugs, meaning that FDA can accept ANDAs referencing these products and filed under section 505(j) of the Federal, Food, Drug, and Cosmetic Act (act). In addition, the agency is aware that other firms market unapproved ophthalmic balanced salt solutions.

II. Safety Issues Associated With Ophthalmic Balanced Salt Solutions.

Serious safety concerns associated with ophthalmic balanced salt solutions are mentioned in adverse drug events reported to the agency and in the literature. Through January 31, 2008,[2] FDA had received over 300 spontaneous reports of serious adverse events associated with all ophthalmic balanced salt solution products. Adverse events associated with these products that have been reported to FDA include toxic anterior segment syndrome (TASS) (a noninfectious inflammation of the anterior segment of the eye), bacterial endophthalmitis, corneal edema, and corneal opacity (clouding). In some cases, these adverse events have resulted in permanent loss of visual acuity. Because the adverse event reports sometimes include limited information on the product used, it is often difficult to establish whether an adverse event was caused by a particular product. In some instances, adverse events may be the result of improperly manufactured products. Product defects affecting the safety and performance of ophthalmic balanced salt solutions include contaminants (such as bacteria, endotoxins, fungi, or particulates) and variations in pH and osmolality.[3] In 2006, for example, contamination with endotoxins of unapproved products made by one manufacturer was associated with several hundred reports of adverse events (both serious and nonserious), including TASS. Given the safety concerns described previously, FDA's review of the individual applications and application supplements for ophthalmic balanced salt solutions, including their manufacturing methods and controls, is essential to ensuring the safety, efficacy, and quality of these products.

III. Legal Status

A. Ophthalmic Balanced Salt Solutions Are New Drugs Requiring Approved Applications

As described previously, ophthalmic balanced salt solution products used for irrigation of the eye during surgery are not generally recognized as safe and effective under section 201(p) of the act (21 U.S.C. 321(p)). Therefore, ophthalmic balanced salt solution products are regarded as new drugs as defined in section 201(p) of the act and are subject to the requirements of section 505 of the act. As set forth in this notice, approval of an NDA or an ANDA under section 505 of the act is required as a condition for manufacturing or marketing all ophthalmic balanced salt solutions. After the dates identified in this notice, FDA intends to take enforcement action against unapproved ophthalmic balanced salt solutions and persons who cause the manufacture or interstate shipment of such products. Any person who submits an application for an ophthalmic balanced salt solution but has not received approval must comply with this notice.

B. Notice of Enforcement Action

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to persons who are marketing unapproved ophthalmic balanced salt solution products that the agency intends to take enforcement action against such products and those who manufacture them or cause them to be manufactured or shipped in interstate commerce.

Manufacturing or shipping unapproved ophthalmic balanced salt solution products can result in enforcement action, including seizure, injunction, or other judicial or administrative proceeding. Consistent with policies described in the agency's guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide'' (the Marketed Unapproved Drugs CPG), the agency does not expect to issue a warning letter or any other further warning to firms marketing unapproved ophthalmic balanced salt solution products prior to taking enforcement action. The agency also reminds firms that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time. The issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs.[4]

[2] Data in the current system date back to 1969, when FDA first implemented an adverse event reporting system.

[3] McDermott, M.L., H.F. Edelhauser, H.M. Hack, and R.H.S. Langston, ''Ophthalmic Irrigants: A Current Review and Update,'' Ophthalmic Surgery, 19(10):724 733, 1988; Briggs, R.B. and D.L. McCartney, ''Balanced Salt Solution Infusion Alert,'' *Archives of Ophthalmology*, 106:718, 1988.

[4] The agency's general approach for dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. That CPG, however, provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, identify a period of time during which the agency does not intend to initiate an enforcement action against a currently marketed unapproved drug solely on the ground that it lacks an approved application under section 505 of the act. With respect to unapproved ophthalmic balanced salt solution products, the agency intends to exercise its enforcement discretion for only a limited period of time because ophthalmic balanced salt solution products are drugs with potential safety risks and approved ophthalmic balanced salt solutions for use in surgical procedures of both shorter and longer durations have been available since 1997. Therefore, the agency intends to implement this notice as follows.

For the effective date of this notice, see the **DATES** section of this document. FDA intends to take enforcement action to enforce section 505(a) of the act against any unapproved ophthalmic balanced salt solution product that is not listed with the agency in full compliance with section 510 of the act (21 U.S.C. 360) before September 22, 2008, and is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after September 23, 2008. FDA also intends to take enforcement action to enforce section 505(a) of the act against any unapproved ophthalmic balanced salt solution that is listed with FDA in full compliance with section 510 of the act but is not being commercially used or sold[5] in the United States on September 22, 2008 and that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after September 23, 2008.

However, for unapproved ophthalmic balanced salt solution products that are commercially used or sold in the United States, have a National Drug Code (NDC) number listed with FDA, and are in full compliance with section 510 of the act before September 22, 2008 (''currently marketed and listed''), the agency intends to exercise its enforcement discretion as follows. FDA intends to initiate enforcement action against any currently marketed and listed unapproved ophthalmic balanced salt solution product that is manufactured on or after November 24, 2008 or that is shipped on or after January 21, 2009.[6] Further, FDA intends to take enforcement action against any person who manufactures or ships such products after these dates. Any person who has submitted or submits an application for an ophthalmic balanced salt solution product but has not received approval must comply with this notice.

The agency, however, does not intend to exercise its enforcement discretion as outlined previously if the following apply: (1) A manufacturer or distributor of an unapproved ophthalmic balanced salt solution product covered by this notice is violating other provisions of the act, including but not limited to, violations related to FDA's current good manufacturing practices, adverse drug event reporting, labeling or misbranding requirements or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of ophthalmic balanced salt solution products above its usual volume during these periods.

Nothing in this notice, including FDA's intent to exercise its enforcement discretion, alters any person's liability or obligations in any other enforcement action, or precludes the agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the act, whether or not related to an unapproved drug product covered by this notice. Similarly, a person who is or becomes enjoined from marketing unapproved drugs may not resume marketing of unapproved ophthalmic balanced salt solution products based on FDA's exercise of enforcement discretion that is set forth in this notice.

Drug manufacturers and distributors should be aware that the agency is exercising its enforcement discretion as described previously only in regard to ophthalmic balanced salt solution products that are marketed under an NDC number listed with the agency in full compliance with section 510 of the act before September 22, 2008. As previously stated, unapproved ophthalmic balanced salt solution products that are currently marketed but not listed with the agency on the date of this notice must, as of the effective date of this notice, have approved applications prior to their shipment in interstate commerce. Moreover, any person or firm that has submitted or submits an application but has yet to receive approval for such products is still responsible for full compliance with this notice.

C. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including NDC number(s), and stating that the product(s) has (have) been discontinued. The letter should be sent to Jennifer Devine (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved ophthalmic balanced salt solution products. FDA plans to rely on its existing records, including drug listing records, or other available information when it targets violations for enforcement action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 502 and 505 (21 U.S.C. 352)) and under authority delegated to the Deputy Commissioner for Policy under section 1410.10 of the FDA Staff Manual Guide.

Dated: September 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–22305 Filed 9–22–08; 8:45 am]

BILLING CODE 4160–01–S

product, are subject to FDA enforcement action at any time.

[5] For the purposes of this notice, the term ''commercially used or sold'' means that the product has been used in a business or activity involving retail or wholesale marketing and/or sale.

[6] If FDA finds it necessary to take enforcement action against a product covered by this notice, the agency may take action relating to all of the defendant's other violations of the act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see, e.g., *United States v. Sage Pharmaceuticals*, 210 F.3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against multiple violations of the act in ''piecemeal fashion'')).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0481]

Topical Drug Products Containing Papain; Enforcement Action Dates

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to take enforcement action against unapproved topical drug products containing papain and persons[1] who manufacture or cause the manufacture of such products or their shipment in interstate commerce. Topical drug products containing papain are marketed, without approved applications, to debride necrotic tissue and liquefy slough in acute and chronic lesions. Potentially serious adverse events have been reported with topical drug products containing papain. Topical drug products containing papain are new drugs that require approved applications because they are not generally recognized as safe and effective. Currently no firm has an approved application to market a topical drug product containing papain. Manufacturers who wish to market topical drug products containing papain must obtain FDA approval of a new drug application (NDA) or an abbreviated new drug application (ANDA).

DATES: This notice is effective September 23, 2008. For information about enforcement dates, see **SUPPLEMENTARY INFORMATION**, section III.B.

ADDRESSES: All communications in response to this notice should be identified with Docket No. FDA–2008–N–0481 and directed to the appropriate office listed as follows:

Regarding applications under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)): Division of Dermatology and Dental Products, Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Silver Spring, MD 20993–0002.

All other communications: Jennifer Devine, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51 (rm. 5240), Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Jennifer Devine, Office of Compliance, Division of New Drugs and Labeling Compliance, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51 (rm. 5240), Silver Spring, MD 20993–0002, 301–796–3347, e-mail: *Jennifer.Devine@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Papain is a protein-cleaving enzyme derived from papaya fruit (*Carica papaya*) and certain other plants. The latex of the papaya plant and its green fruits contain two proteolytic enzymes, papain and chymopapain. The latter is most abundant, but papain is twice as potent. The presence and effects of proteases in papaya fruit latex have been well known since the 1750s, but it was not until the 1870s that the importance of papaya latex as a source of enzymes was recognized. Although the exact year is unknown, marketing of topical papain drug products in the United States began before 1962.

Topical drug products containing papain are used for the debridement of necrotic tissue and liquefication of slough in acute and chronic lesions, such as diabetic ulcers, pressure ulcers, varicose ulcers, and miscellaneous traumatic infected wounds. These products generally combine papain with other active ingredients (such as urea, chlorophyllin copper complex, and copper sodium chlorophyllin), which are intended to promote healthy granulation, control local inflammation, reduce wound odors, and rehydrate skin. In addition, papain is marketed in oral formulations for a variety of indications, including as an aid in protein digestion.[2] It is also used in the food industry as a meat tenderizer.[3]

Papain-containing drug products in topical form historically have been marketed without approval, and because no firm obtained an application for them prior to passage of the Drug Amendments of 1962, they were not included in the Drug Efficacy Study Implementation (DESI) review.

II. Safety and Efficacy Issues in the Use of Topical Papain Drug Products

Adverse events associated with the use of topical papain products reported to FDA raise serious safety concerns regarding these products. Through January 2008,[4] FDA has received 37 reports of adverse events associated with topical papain products. In addition to several complaints that the products were ineffective, the reports include cases of potentially life-threatening hypersensitivity reactions. Reactions described include serious cases of anaphylaxis and anaphylactic shock that started within 15 minutes of topical papain use and resulted in hospitalizations, including admissions to the intensive care unit. Published literature also describes incidents of hypersensitivity to other papain-containing products, including meat tenderizer, contact lens solution, and adhesive removers in the beauty industry. Another concern exists regarding patients with latex sensitivity. Cross-reactivity between latex and papaya has been documented in medical literature, and one of the cases reported to FDA involved anaphylactic shock in a patient with a history of allergy to latex. It is notable that labeling for currently marketed topical papain products does not provide any warnings regarding hypersensitivity reactions and latex cross-reactivity.

FDA is particularly concerned about adverse events associated with the use of papain-containing topical drug products in light of the dearth of published well-controlled studies demonstrating the effectiveness of those products. Given the absence of the kinds of scientific studies routinely conducted by sponsors and submitted for agency review as part of the FDA approval process, it is impossible for the agency to assess either the amount of risk associated with these products or the extent to which their benefits might justify their risks, including severe, systemic, potentially life-threatening hypersensitivity reactions.

III. Legal Status

A. Topical Papain Products Are New Drugs Requiring Approved Applications

Based both on the safety considerations previously described and the absence of published literature documenting that topical drugs containing papain are safe and effective, such drugs are not generally recognized as safe and effective under section 201(p) of the act (21 U.S.C. 321(p)) for any indication, including for the debridement of necrotic tissue and liquefication of slough in acute and chronic lesions. Therefore, a topical drug product containing papain, alone or in combination with other drugs, is regarded as a new drug as defined in section 201(p) of the act and is subject to the requirements of section 505 of the act. As set forth in this notice, approval of an NDA or an ANDA under section 505 of the act is required as a condition for manufacturing or marketing all topical drug products containing papain. After the dates identified in this notice, FDA intends to take enforcement action as described in this notice against unapproved topical drug products containing papain and persons who

[1] A ''person'' includes individuals, partnerships, corporations, or associations (21 U.S.C. 321(e)).

[2] Lacy, D.F., Armstrong, L.L., Goldman, M.P., Lance, L.L., eds., *Drug Information Handbook*, 2008–2009; 17th edition.

[3] See *http://www.foodreference.com/html/fmeatttenterizer.html*.

[4] Data in the current system date back to 1969, when FDA first implemented an adverse event reporting system.

cause the manufacture or interstate shipment of such products. Any person who submits an NDA or an ANDA for a topical product containing papain but has not received approval must comply with this notice.

This notice does not affect drugs containing papain in oral dosage forms, which FDA intends to address at a later date.

B. Notice of Enforcement Action

Although not required to do so by the Administrative Procedure Act, the act, or any rules issued under its authority, or for any other legal reason, FDA is providing this notice to persons who are marketing unapproved topical drug products containing papain that the agency intends to take enforcement action against such products and those who manufacture them or cause them to be manufactured or shipped in interstate commerce. Manufacturing or shipping unapproved topical products containing papain can result in enforcement action, including seizure, injunction, or other judicial or administrative proceeding. Consistent with policies described in the agency's guidance entitled ''Marketed Unapproved Drugs—Compliance Policy Guide'' (the Marketed Unapproved Drugs CPG), the agency does not expect to issue a warning letter or any other further warning to firms prior to taking enforcement action relating to unapproved papain-containing topical drug products. The agency also reminds firms and individuals that, as stated in the Marketed Unapproved Drugs CPG, any unapproved drug marketed without a required approved drug application is subject to agency enforcement action at any time. The issuance of this notice does not in any way obligate the agency to issue similar notices or any notice in the future regarding marketed unapproved drugs.[5]

As described in the Marketed Unapproved Drugs CPG, the agency may, at its discretion, identify a period of time during which the agency does not intend to initiate an enforcement action against a currently marketed unapproved drug on the ground that it lacks an approved application under section 505 of the act in order to, for example, preserve access to medically necessary drugs or ease disruption to affected parties. With respect to unapproved topical drug products containing papain, the agency intends to exercise its enforcement discretion for only a limited period of time because these are drugs with potential safety risks that lack scientific evidence of effectiveness. Therefore, the agency intends to implement this notice as follows.

For the effective date of this notice, see the **DATES** section of this document. FDA intends to take action to enforce section 505(a) of the act against any unapproved topical drug product containing papain that is not listed with FDA in full compliance with section 510 of the act (21 U.S.C. 360) before September 22, 2008, and that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after September 23, 2008. FDA also intends to take action to enforce section 505(a) of the act against any unapproved topical drug containing papain that has a National Drug Code (NDC) number listed with FDA in full compliance with section 510 of the act but is not being commercially used or sold[6] in the United States on September 22, 2008, and that is manufactured, shipped, or otherwise introduced or delivered for introduction into interstate commerce by any person on or after September 23, 2008.

However, for unapproved topical drug products containing papain that are commercially used or sold in the United States, have a NDC number listed with FDA, and are in full compliance with section 510 of the act before September 22, 2008 (''currently marketed and listed''), the agency intends to exercise its enforcement discretion as follows. FDA intends to initiate enforcement action against any currently marketed and listed unapproved topical product containing papain that is manufactured on or after November 24, 2008 or that is shipped on or after January 21, 2009.[7] Further, FDA intends to take enforcement action against any person who manufactures or ships such products after the dates set forth above. Any person who submits a new drug application for a topical drug product containing papain but has not received approval must comply with this notice.

The agency, however, does not intend to exercise its enforcement discretion as outlined previously if the following apply: (1) A manufacturer or distributor of an unapproved topical drug product containing papain covered by this notice is violating other provisions of the act (including but not limited to, violations related to FDA's current good manufacturing practices, adverse drug event reporting, or labeling requirements) or (2) it appears that a firm, in response to this notice, increases its manufacture or interstate shipment of unapproved topical drug products containing papain above its usual volume.

Nothing in this notice, including FDA's intent to exercise its enforcement discretion, alters any person's liability or obligations in any other enforcement action or litigation, or precludes the agency from initiating or proceeding with enforcement action in connection with any other alleged violation of the act, whether or not related to an unapproved drug product covered by this notice. Similarly, a person who is or becomes enjoined from marketing unapproved drugs may not resume marketing of unapproved topical drug products containing papain based on FDA's exercise of enforcement discretion as set forth in this notice.

Drug manufacturers and distributors should be aware that the agency is exercising its enforcement discretion as described previously only in regard to topical papain drug products that are marketed under an NDC number listed with the agency in full compliance with section 510 of the act before September 22, 2008. As previously stated, unapproved topical drug products containing papain that are not currently marketed, or that are currently marketed but not listed with the agency on the date of this notice must have approved applications prior to their shipment in interstate commerce. Moreover, any person or firm that submits an NDA or an ANDA but has yet to receive approval for such products is still responsible for full compliance with this notice.

C. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section

[5] The agency's general approach in dealing with these products in an orderly manner is spelled out in the Marketed Unapproved Drugs CPG. That CPG, however, provides notice that any product that is being marketed illegally, and the persons responsible for causing the illegal marketing of the product, are subject to FDA enforcement action at any time.

[6] For the purposes of this notice, the term ''commercially used or sold'' means that the product has been used in a business or activity involving retail or wholesale marketing and/or sale.

[7] If FDA finds it necessary to take enforcement action against a product covered by this notice, the agency may take action relating to all of the defendant's other violations of the act at the same time. For example, if a firm continues to manufacture or market a product covered by this notice after the applicable enforcement date has passed, to preserve limited agency resources, FDA may take enforcement action relating to all of the firm's unapproved drugs that require applications at the same time (see, e.g., *United States v. Sage Pharmaceuticals*, 210 F. 3d 475, 479–480 (5th Cir. 2000) (permitting the agency to combine all violations of the act in one proceeding, rather than taking action against multiple violations of the act in ''piecemeal fashion'')).

510(j) of the act. Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including the product NDC number(s), and stating that the product(s) has (have) been discontinued. The letter should be sent to Jennifer Devine (see **ADDRESSES**). Firms should also update the listing of their products under section 510(j) of the act to reflect discontinuation of unapproved topical papain drug products. Updating of listing information may be advantageous for a firm because FDA plans to rely on its existing records, the results of a subsequent inspection, or other available information when we evaluate whether to initiate enforcement action.

This notice is issued under sections 502 and 505 of the act (21 U.S.C. 352) and under authority delegated to the Deputy Commissioner for Policy under section 1410.10 of the FDA Staff Manual Guide.

Dated: September 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–22300 Filed 9–22–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 357–6400. For information on HRSA(s role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on April 1, 2007, through December 31, 2007.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Annie Jackson, Gary, Indiana, Court of Federal Claims Number 07–0217V.
2. Mildred Free Corun, Murphy, North Carolina, Court of Federal Claims Number 07–0219V.
3. Amy and Joel Cochran on behalf of Elbrywn Cochran, Scott Air Force Base, Illinois, Court of Federal Claims Number 07–0221V.
4. Christine Sharlike on behalf of Megan Sharlike. Westerville, Ohio, Court of Federal Claims Number 07–0229V.
5. Kristy Paulsen and Shannon Berhorst on behalf of Landon Michael Lee Berhorst, Deceased, Monticello, Missouri, Court of Federal Claims Number 07–0233V
6. Nancey Cost on behalf of Jason Cost, Gastonia, North Carolina, Court of Federal Claims Number 07–0234V.
7. Mr. and Mrs. Peter Wynne Wilcox, Jr. on behalf of Marshall Wilcox, Macon,

Georgia, Court of Federal Claims Number 07–0238V.

8. Renee Meyer, Colorado Springs, Colorado, Court of Federal Claims Number 07–0241V.

9. Karen Doyle, Springfield, Missouri, Court of Federal Claims Number 07–0242V.

10. Barbara and Robert Curtis on behalf of Robert Curtis, Wilmington, Ohio, Court of Federal Claims Number 07–0244V.

11. Sherry Lee Tam, Wailuka, Hawaii, Court of Federal Claims Number 07–0251V.

12. Kristina Miller and Yvonne and William McElvey on behalf of Aulburn Burgess, Naples, Florida, Court of Federal Claims Number 07–0258V.

13. Mariana Ruvalcaba on behalf of Ian Arias, El Paso, Texas, Court of Federal Claims Number 07–0259V.

14. Christina Caruno, Easton, Pennsylvania, Court of Federal Claims Number 07–0260V.

15. John Stavridis on behalf of William Stavridis, Columbus, Ohio, Court of Federal Claims Number 07–0261V.

16. Vanessa Hollingsworth on behalf of Nicholas Czaban, Lake City, Florida, Court of Federal Claims Number 07–0262V.

17. Rachel and Ryan Hellewell on behalf of Porter O'Ryan Hellewell, Cedar Falls, Iowa, Court of Federal Claims Number 07–0268V.

18. Alissa and Derren Burse on behalf of Derren Josiah Burse, Marietta, Georgia, Court of Federal Claims Number 07–0269V.

19. Amy Rocha, Boston, Massachusetts, Court of Federal Claims Number 07–0275V.

20. Karon Merrill, Reno, Nevada, Court of Federal Claims Number 07–0278V.

21. Matthew and Justin Wiechart on behalf of Keith Wiechart, Cape Coral, Florida, Court of Federal Claims Number 07–0283V.

22. Izzy Tahil on behalf of Lucy Garcia, New York, New York, Court of Federal Claims Number 07–0286V.

23. Michael H. Sleeper, Jr., Great Lakes, Illinois, Court of Federal Claims Number 07–0288V.

24. Beth Sherman on behalf of Justin Sherman, Industry, Pennsylvania, Court of Federal Claims Number 07–0289V.

25. Tammy L. Edwards-Goza, Washington, Missouri, Court of Federal Claims Number 07–0290V.

26. Cory Smaltz, Beaufort, South Carolina, Court of Federal Claims Number 07–0293V.

27. Helen Zaloudek, Bradenton, Florida, Court of Federal Claims Number 07–0294V.

28. Jeana Harris, Naples, Florida, Court of Federal Claims Number 07–0295V.

29. Shahema and Balmoukound Jai Jai Ram on behalf of Luke Jai Jai Ram, Hollywood, Florida, Court of Federal Claims Number 07–0296V.

30. Julie Rishel on behalf of Chase Thomas Rishel, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0297V.

31. Shauntae Mendoza and Pedro Quiles on behalf of Marcus Quiles, Tooele, Utah, Court of Federal Claims Number 07–0298V.

32. Miriam Mashiah on behalf of Ravi Mashiah, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0300V.

33. Joanne and Wayne Bardowell on behalf of Wayne Bardowell, Jackson, New Jersey, Court of Federal Claims Number 07–0301V.

34. Patricia Williams and Joseph DiFiglia on behalf of Giana DiFiglia, Deceased, Hackettstown, New Jersey, Court of Federal Claims Number 07–0302V.

35. Beth Pletcher on behalf of Brett Glassberg, Chester, New Jersey, Court of Federal Claims Number 07–0303V.

36. Sheryl Gabrielle, Burlington City, New Jersey, Court of Federal Claims Number 07–0304V.

37. Joanna and Timothy Sarver on behalf of Erica Lynn Sarver, Ames, Iowa, Court of Federal Claims Number 07–0307V.

38. Patricia and Todd Nowak on behalf of Michael Matthew Nowak, Angola, New York, Court of Federal Claims Number 07–0311V.

39. Terry Allen Jones, Lockport, New York, Court of Federal Claims Number 07–0313V.

40. Cynthia Cabalo on behalf of Cierra Cabalo, Honolulu, Hawaii, Court of Federal Claims Number 07–0314V.

41. Rhonda Sango on behalf of Rhonda Sango (nka Rhonda Tubbs), Covington, Kentucky, Court of Federal Claims Number 07–0329V.

42. Dawn and Eric Herrmann on behalf of Wyatt Herrmann, Minneapolis, Minnesota, Court of Federal Claims Number 07–0330V.

43. Tracy D. Cook, La Grande, Oregon, Court of Federal Claims Number 07–0331V.

44. Melinda and Robert Needs on behalf of Jacob Needs, Baltimore, Maryland, Court of Federal Claims Number 07–0332V.

45. Shawna and Mark Patterson on behalf of Kristan Patterson, Baltimore, Maryland, Court of Federal Claims Number 07–0333V.

46. Laura and Stephen Pyburn on behalf of Bailey Pyburn, Baltimore, Maryland, Court of Federal Claims Number 07–0334V.

47. Jim Benham, Stephenville, Texas, Court of Federal Claims Number 07–0339V.

48. Natalie and Duane Schwemlein on behalf of Stephen Schwemlein, Chicago, Illinois, Court of Federal Claims Number 07–0343V.

49. Fred Venerin, Tallahassee, Florida, Court of Federal Claims Number 07–0347V.

50. Susan G. Mollica, Tamworth, New Hampshire, Court of Federal Claims Number 07–0349V.

51. Jude Anna DiPeppo, Fresh Meadows, New York, Court of Federal Claims Number 07–0353V.

52. Julie and Scott Miller on behalf of Landon Miller, Lake Success, New York, Court of Federal Claims Number 07–0354V.

53. Lana and Garrett Kesecker on behalf of Randy Kesecker, Charleston, West Virginia, Court of Federal Claims Number 07–0356V.

54. Jamie Bailey on behalf of Cameron Bailey, Charleston, West Virginia, Court of Federal Claims Number 07–0357V.

55. Jane Doe, Los Angeles, California, Court of Federal Claims Number 07–0360V.

56. Julie and Christopher Neumann on behalf of Maximilian Neumann, Granada Hills, California, Court of Federal Claims Number 07–0362V.

57. Mark Moran, Chicago, Illinois, Court of Federal Claims Number 07–0363V.

58. Karen Ann and Richard George Harbin on behalf of Ryka Nicole Harbin, Deceased, Gurley, Alabama, Court of Federal Claims Number 07–0364V.

59. Channon and Andrew Coffey on behalf of Parker Shane Coffey, Ft. Lauderdale, Florida, Court of Federal Claims Number 07–0368V.

60. Tomoka Finkle, Thousand Oaks, California, Court of Federal Claims Number 07–0370V.

61. Julie and Keneth Peber on behalf of Kyle Peber, Glasco, New York, Court of Federal Claims Number 07–0371V.

62. Stephen Torday, M.D., Fountain Valley, California, Court of Federal Claims Number 07–0372V.

63. Mary and David Troutman on behalf of David Troutman, Jr., Chicago, Illinois, Court of Federal Claims Number 07–0373V.

64. Yluminada Mojica and Julio Acevedo on behalf of Joshua Acevedo, Glen Rock, New Jersey, Court of Federal Claims Number 07–0376V.

65. Lori Brunton, Plano, Texas, Court of Federal Claims Number 07–0380V.

66. Kristin and Chad Howard on behalf of Ashleigh Howard, Overland Park, Kansas, Court of Federal Claims Number 07–0383V.

67. Nikki L'Heureux, Torrance, California, Court of Federal Claims Number 07–0384V.
68. Rebecca Paterno on behalf of Ryan Paterno, Wall, New Jersey, Court of Federal Claims Number 07–0386V.
69. Rudolfe DuBois, Providence, Rhode Island, Court of Federal Claims Number 07–0387V.
70. Holly Courville on behalf of Ayden Courville, Eunice, Louisiana, Court of Federal Claims Number 07–0388V.
71. Lisa and Jonathan Holderfield on behalf of Kali Holderfield, Asheville, North Carolina, Court of Federal Claims Number 07–0389V.
72. Verna M. Lisa and Jay Schmehl on behalf of Jayson Louis Schmehl, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0397V.
73. Rodney Allen Traylor, Norfolk, Virginia, Court of Federal Claims Number 07–0398V.
74. T. Marlene Stapleton, Wichita, Kansas, Court of Federal Claims Number 07–0399V.
75. Richard Janssen, Jr., on behalf of William Jacob Janssen, Missoula, Montana, Court of Federal Claims Number 07–0401V.
76. Julieanne and Ryan Atwell on behalf of Trevor Atwell, Easton, Maryland, Court of Federal Claims Number 07–0402V.
77. Eileen Crafts, Conway, New Hampshire, Court of Federal Claims Number 07–0403V.
78. Sarah Jane and James Mansour on behalf of Madison Elizabeth Mansour, Houston, Texas, Court of Federal Claims Number 07–0406V.
79. Anthony D. Lazzeri on behalf of Anthony J. Lazzeri, Boca Raton, Florida, Court of Federal Claims Number 07–0408V.
80. Glenda Kennedy, Tyler, Texas, Court of Federal Claims Number 07–0410V.
81. Toni Hogenmiller on behalf of Summer Hogenmiller, Williamsville, New York, Court of Federal Claims Number 07–0411V.
82. Joseph Basel, Mankato, Minnesota, Court of Federal Claims Number 07–0412V.
83. Holly Palm on behalf of Preston Palm, Banner Elk, North Carolina, Court of Federal Claims Number 07–0413V.
84. Kathallene and David Holtzman on behalf of Alex Holtzman, Centreville, Maryland, Court of Federal Claims Number 07–0414V.
85. Ann M. Isabel, Mentor, Ohio, Court of Federal Claims Number 07–0415V.
86. Richard Cuppler, Navesink, New Jersey, Court of Federal Claims Number 07–0416V.
87. James Landi, Falls Church, Virginia, Court of Federal Claims Number 07–0417V.
88. Ruby Thurston, Eureka, California, Court of Federal Claims Number 07–0418V.
89. Rex Ruiz, M.D., Centreville, Virginia, Court of Federal Claims Number 07–0419V.
90. Maria Caldwell on behalf of Brooklynne Del Carmen-Mariah Caldwell, Deceased, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0420V.
91. Lisa Crain on behalf of Leila Crain, Birmingham, Alabama, Court of Federal Claims Number 07–0421V.
92. Kerry D. Young, Ft. Benning, Oklahoma, Court of Federal Claims Number 07–0422V.
93. Adelle Boegershausen, San Rafael, California, Court of Federal Claims Number 07–0423V.
94. Richard Smith, Seminole, Florida, Court of Federal Claims Number 07–0424V.
95. Vera Ray on behalf of Teresa Ray, Greenwood, Mississippi, Court of Federal Claims Number 07–0427V.
96. Patricia Sanders Young on behalf of Devonte Young, Jackson, Mississippi, Court of Federal Claims Number 07–0428V.
97. Pearlie King on behalf of Veronica Jones, Bolivar County, Mississippi, Court of Federal Claims Number 07–0429V.
98. Sheila Watson on behalf of Shenquency Gowdy, Jackson, Mississippi, Court of Federal Claims Number 07–0430V.
99. Brenda McMurtry on behalf of Kenny Billingslea, Canton, Mississippi, Court of Federal Claims Number 07–0431V.
100. Arlisha Ross on behalf of Sarabian Ross, Jackson, Mississippi, Court of Federal Claims Number 07–0432V.
101. Annette Rzewuski on behalf of Adrian Rzewuski, Chicago, Illinois, Court of Federal Claims Number 07–0433V.
102. Kimberly and Thomas Billcliff on behalf of Kaden Billcliff, Atkinson, New Hampshire, Court of Federal Claims Number 07–0435V.
103. Nicole Benson, Gillette, Wyoming, Court of Federal Claims Number 07–0436V.
104. Debra Williams on behalf of Ashley Erin Williams, Chicago, Illinois, Court of Federal Claims Number 07–0437V.
105. Julia Schnardthorst, McKinney, Texas, Court of Federal Claims Number 07–0438V.
106. Theo A. Jones, Fort Sam Houston, Texas, Court of Federal Claims Number 07–0439V.
107. Jeanette Adler, Paramus, New Jersey, Court of Federal Claims Number 07–0440V.
108. Barbara Turner Roderick, San Francisco, California, Court of Federal Claims Number 07–0441V.
109. Ronald Cyrulnik, Long Beach, California, Court of Federal Claims Number 07–0442V.
110. Joan Caves, Okeechobee, Florida, Court of Federal Claims Number 07–0443V.
111. Richard Renza, Swainton, New Jersey, Court of Federal Claims Number 07–0444V.
112. Stanley Wheatley, Du Quoin, Illinois, Court of Federal Claims Number 07–0445V.
113. Jennifer Hibbard, Quincy, Massachusetts, Court of Federal Claims Number 07–0446V.
114. Tara Hannebaum, Arvada, Colorado, Court of Federal Claims Number 07–0447V.
115. Beverly Harwell, McKenzie, Tennessee, Court of Federal Claims Number 07–0448V.
116. Patrick Harris, Garden Plain, Kansas, Court of Federal Claims Number 07–0449V.
117. Sandra Dwares, Etna, Ohio, Court of Federal Claims Number 07–0450V.
118. Marilyn Davis, Hoisington, Kansas, Court of Federal Claims Number 07–0451V.
119. Debra Chuisano on behalf of Frances D'Esposito, Deceased, Babylon, New York, Court of Federal Claims Number 07–0452V.
120. Mary Browning on behalf of Colin Brynildson, Atlanta, Georgia, Court of Federal Claims Number 07–0453V.
121. John Bell, Mercer Island, Washington, Court of Federal Claims Number 07–0454V.
122. Nancy Fredrickson, Lakeville, Minnesota, Court of Federal Claims Number 07–0455V.
123. William Connor, Papillion, Nebraska, Court of Federal Claims Number 07–0456V.
124. Christine Lee, Lancaster, California, Court of Federal Claims Number 07–0457V.
125. John Taylor, Stuart, Nebraska, Court of Federal Claims Number 07–0458V.
126. Carolyn Holliday, Athens, Georgia, Court of Federal Claims Number 07–0459V.
127. Patrica Ann and David Gerwig on behalf of David Gerwig, New York, New York, Court of Federal Claims Number 07–0460V.
128. Bonnie Jean Olson, Serry, New York, Court of Federal Claims Number 07–0461V.

129. Thurman Daniels, Tobyhanna, Pennsylvania, Court of Federal Claims Number 07–0462V.

130. Dawn and Dennis Hoekstra on behalf of Dawn Hoekstra, DeSoto, Missouri, Court of Federal Claims Number 07–0463V.

131. Kathleen and Jacque Coble on behalf of Kathleen Coble, New York, New York, Court of Federal Claims Number 07–0464V.

132. Frances and Leonard Campbell on behalf of Frances Campbell, Johannesburg, Michigan, Court of Federal Claims Number 07–0465V.

133. Patricia Hill, West Branch, Michigan, Court of Federal Claims Number 07–0469V.

134. Christine Demetri, Fairfield, Connecticut, Court of Federal Claims Number 07–0470V.

135. Luann Parker, Cincinnati, Ohio, Court of Federal Claims Number 07–0471V.

136. Andrea Hodges, New Horizon Vacaville, California, Court of Federal Claims Number 07–0472V.

137. Marie Luna, La Jolla, California, Court of Federal Claims Number 07–0473V.

138. Lois and Robert Weinewuth on behalf of Lois Weinewuth, Cincinnati, Ohio, Court of Federal Claims Number 07–0474V.

139. Kaye Thornton, Fort Worth, Texas, Court of Federal Claims Number 07–0475V.

140. W.J. McCool on behalf of Opal McCool, Deceased, Williamsburg, Virginia, Court of Federal Claims Number 07–0476V.

141. Camellia and Brad Kidd on behalf of Brad Kidd, Cheyenne, Wyoming, Court of Federal Claims Number 07–0477V.

142. Diane and John Heckenberg on behalf of Diane Heckenberg, Daly City, California, Court of Federal Claims Number 07–0478V.

143. Magda and Jose Paredes on behalf of Jessica Paredes, Morristown, New Jersey, Court of Federal Claims Number 07–0479V.

144. Josephine Ami, Phoenix, Arizona, Court of Federal Claims Number 07–0480V.

145. Vanessa Smith on behalf of Elisha Snell, Jamaica, New York, Court of Federal Claims Number 07–0481V.

146. Elsa and Jorge Alberto Carcamo on behalf of Jorge Alberto Carcamo, Simi Valley, California, Court of Federal Claims Number 07–0483V.

147. Dawn and Shane Smith on behalf of Jeanna Smith, Monroe, Washington, Court of Federal Claims Number 07–0484V.

148. Dawn and Shane Smith on behalf of Deagan Smith, Sultan, Washington, Court of Federal Claims Number 07–0485V.

149. Elizabeth Hunt on behalf of Anthony Alva, Chicago, Illinois, Court of Federal Claims Number 07–0486V.

150. Shelly Revis on behalf of Thiara Revis, Longview, Washington, Court of Federal Claims Number 07–0487V.

151. Mary Lou Pittman, Lansing, Michigan, Court of Federal Claims Number 07–0488V.

152. Sally Sigal on behalf of Eli Sigal, Deceased, Palm Desert, California, Court of Federal Claims Number 07–0489V.

153. James W. ''Woody'' Thompson, Monroe, Louisiana, Court of Federal Claims Number 07–0490V.

154. Maria and Alan Janik on behalf of Joshua Janik, Chicago, Illinois, Court of Federal Claims Number 07–0496V.

155. Dominiana and Howard McLaughlin on behalf of Aaron Agripino McLaughlin, Riverside, California, Court of Federal Claims Number 07–0497V.

156. Mary and David Troutman on behalf of Terance Troutman, Chicago, Illinois, Court of Federal Claims Number 07–0498V.

157. Maria and Alan Janik on behalf of Nathan Janik, Chicago, Illinois, Court of Federal Claims Number 07–0499V.

158. Yluminada Mojica and Julio Acevedo on behalf of Joshua Acevedo, Elizabeth, New Jersey, Court of Federal Claims Number 07–0501V.

159. Hanan Ayoub and Ahmed Fadil on behalf of Foad Fadil, Houston, Texas, Court of Federal Claims Number 07–0502V.

160. Marta Pagan, San German, Puerto Rico, Court of Federal Claims Number 07–0504V.

161. Catherine and Steven Jameson on behalf of William Romulo Jameson, Whispering Pines, North Carolina, Court of Federal Claims Number 07–0506V.

162. Xi Ling on behalf of Daniel Lee, Edina, Minnesota, Court of Federal Claims Number 07–0507V.

163. Trina Eichorn, Osceola, Arkansas, Court of Federal Claims Number 07–0508V.

164. Alta Widvey on behalf of Merle Widvey, Shirley, Indiana, Court of Federal Claims Number 07–0509V.

165. Francess Bendu on behalf of Francis Bendu, Jr., Hyattsville, Maryland, Court of Federal Claims Number 07–0510V.

166. Kelly Gelzheiser, Pittsburgh, Pennsylvania, Court of Federal Claims Number 07–0511V.

167. Mirna Ortiz on behalf of Jordan Ortiz, Passaic, New Jersey, Court of Federal Claims Number 07–0515V.

168. Kelly and James Carmody on behalf of Dylan Carmody, Asheville, North Carolina, Court of Federal Claims Number 07–0521V.

169. Lisa Sue McDonaugh, Redlands, California, Court of Federal Claims Number 07–0527V.

170. Dana and Robert Napoleon on behalf of Keanu Robert Napoleon, Puyallup, Washington, Court of Federal Claims Number 07–0528V.

171. Matt Miller on behalf of Justine Miller, Rochester, New York, Court of Federal Claims Number 07–0530V.

172. Chiquita Thompson on behalf of Justin Thompson, Atlanta, Georgia, Court of Federal Claims Number 07–0531V.

173. Elaine Matthews on behalf of Samuel Matthews, III, Euclid, Ohio, Court of Federal Claims Number 07–0533V.

174. Christine Catchick on behalf of Caden Catchick, Royal Oak, Michigan, Court of Federal Claims Number 07–0534V.

175. Kathallene and David Holtzman on behalf of Justin Holtzman, Centreville, Maryland, Court of Federal Claims Number 07–0535V.

176. Tammy and Brian Beasley on behalf of Dakota Beasley, Fort Myers, Florida, Court of Federal Claims Number 07–0536V.

177. Jessica Hedrick on behalf of Cameron Hedrick, McConnell AFB, Kansas, Court of Federal Claims Number 07–0539V.

178. Denisha Jones on behalf of Daylen Jones, Kansas City, Missouri, Court of Federal Claims Number 07–0549V.

179. Rebecca and Michael Wilkins on behalf of Brandon Wilkins, Chicago, Illinois, Court of Federal Claims Number 07–0550V.

180. Troy Amar Story, Sr. on behalf of Troy Amar Story, Jr., Chattanooga, Tennessee, Court of Federal Claims Number 07–0551V.

181. Nancy Angiello and William Gillett on behalf of Sophia-Gabriella Gillett, Hastings on Hudson, New York, Court of Federal Claims Number 07–0552V.

182. Lester Graham, Russellville, Arkansas, Court of Federal Claims Number 07–0553V.

183. Carolyn K. Horne, Sherrills Ford, North Carolina, Court of Federal Claims Number 07–0554V.

184. Jennifer Workman on behalf of Azah-Lynn Renee Hunt, New Smyrna Beach, Florida, Court of Federal Claims Number 07–0557V.

185. Doreen Orsillo on behalf of Maisie Orsillo, Trenton, New Jersey, Court of Federal Claims Number 07–0559V.

186. Doreen Orsillo on behalf of Grace Orsillo, Trenton, New Jersey, Court of Federal Claims Number 07–0560V.

187. Jennifer Spokas on behalf of Russell Spokas, Philadelphia,

Pennsylvania, Court of Federal Claims Number 07–0563V.

188. Jana and Travis Lively on behalf of Austin Lively, College Station, Texas, Court of Federal Claims Number 07–0565V.

189. Kara Hallenbeck on behalf of Wesley Ellis, San Ramon, California, Court of Federal Claims Number 07–0566V.

190. Miguel Calderon on behalf of Cameron Calderon and Max Calderon, Santa Rosa, California, Court of Federal Claims Number 07–0567V.

191. Joann Wagstaff on behalf of John Ryan Bolton, Red Oak, Virginia, Court of Federal Claims Number 07–0568V.

192. Numan and Samerh Khalil on behalf of Mehdi N. Khalil, Union City, New Jersey, Court of Federal Claims Number 07–0570V.

193. Michelle and Lance Moretto on behalf of Anthony Moretto, Ramsey, Minnesota, Court of Federal Claims Number 07–0571V.

194. Theresa Brown on behalf of Dylan Isenhart, Akron, Ohio, Court of Federal Claims Number 07–0572V.

195. Elaine Matthews on behalf of Emanuel Matthews, Euclid, Ohio, Court of Federal Claims Number 07–0573V.

196. Tahir Young on behalf of Ahmad Young, Irvington, New Jersey, Court of Federal Claims Number 07–0574V.

197. Diane Rose on behalf of Chelsea Rose, Lenoir, North Carolina, Court of Federal Claims Number 07–0575V.

198. Dmitria Robidoux on behalf of Dominic Robidoux, Los Angeles, California, Court of Federal Claims Number 07–0576V.

199. Tasha and Joshua Ancheta-DeMello on behalf of Keli'ana Ancheta-DeMello, Kamuela, Hawaii, Court of Federal Claims Number 07–0580V.

200. Valerie and Stefan Shubert on behalf of Connor R. Shubert, St. Augustine, Florida, Court of Federal Claims Number 07–0583V.

201. Lisa and Robert Jones on behalf of Hannah Jones, Chicago, Illinois, Court of Federal Claims Number 07–0584V.

202. Vijendra and Sunita Mohan on behalf of Sonya Mohan, New Albany, Ohio, Court of Federal Claims Number 07–0585V.

203. Nicole Krieger on behalf of Jared Jayden Rex Roe, Denver, Colorado, Court of Federal Claims Number 07–0586V.

204. Christopher Coale, Angleton, Texas, Court of Federal Claims Number 07–0590V.

205. Miguel Calderon on behalf of Cameron Calderon, Fontana, California, Court of Federal Claims Number 07–0595V.

206. Miguel Calderon on behalf of Max Calderon, Santa Rosa, California, Court of Federal Claims Number 07–0596V.

207. James Smith, Wichita, Kansas, Court of Federal Claims Number 07–0602V.

208. Tracy and Stuart Spern on behalf of Joshua Spern, Hamilton, New Jersey, Court of Federal Claims Number 07–0603V.

209. Fatma Neslihan Kreher on behalf of Neshe Kreher, Tampa, Florida, Court of Federal Claims Number 07–0604V.

210. Nancy Barclay on behalf of Matthew Ramirez, Miami, Florida, Court of Federal Claims Number 07–0605V.

211. Jennifer and Jorge Ocana on behalf of Christian Ocana, Ladera Ranch, California, Court of Federal Claims Number 07–0607V.

212. Tonya Dixon on behalf of Jarius Wheaton, Jacksonville, Florida, Court of Federal Claims Number 07–0610V.

213. Kristen Elizabeth and Timothy Mark Giltinan on behalf of Braeden Timothy Giltinan Erie, Colorado, Court of Federal Claims Number 07–0618V.

214. Adriana and Catriel Tulian on behalf of Alejandro Tulian, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0619V.

215. Adriana and Catriel Tulian on behalf of Gia Tulian, Philadelphia, Pennsylvania, Court of Federal Claims Number 07–0620V.

216. Aurealio Leal and Esthela Rosas Ramirez/Covarrubias on behalf of Freddie Leal Rosas Spartanburg, South Carolina, Court of Federal Claims Number 07–0621V.

217. Bessie and Gary McGarvey on behalf of Bessie McGarvey, Columbus, Ohio, Court of Federal Claims Number 07–0622V

218. Holly and Christopher Wetz on behalf of Matthew Wetz, Riverview, Florida, Court of Federal Claims Number 07–0633V.

219. Dawn Burgess on behalf of Logan Burgess, Los Angeles, California, Court of Federal Claims Number 07–0634V.

220. Bahji Amelia Adams, Smyrna, Georgia, Court of Federal Claims Number 07–0639V.

221. Kate and Matt Dorn on behalf of Ethan Dorn, Menasha, Wisconsin, Court of Federal Claims Number 07–0640V.

222. Heather and Jerry Remien on behalf of Ryan Remien, Glenview, Illinois, Court of Federal Claims Number 07–0642V.

223. Tammy and Clint Quanstrom on behalf of Michael Quanstrom, East Dundee, Illinois, Court of Federal Claims Number 07–0643V.

224. Ruth Moore, Shawnee Mission, Kansas, Court of Federal Claims Number 07–0645V

225. Lola Coughlin, Cincinnati, Ohio, Court of Federal Claims Number 07–0657V.

226. Kimberly and Peter Johnson on behalf of Patrick Johnson, Davis, California, Court of Federal Claims Number 07–0661V.

227. Michelle Besuyen on behalf of Tyler Besuyen, Aloha, Oregon, Court of Federal Claims Number 07–0662V.

228. Kimberly Quillen-Millen, Elkhart, Indiana, Court of Federal Claims Number 07–0666V.

229. Josette Richard on behalf of her minor child, Watertown, Massachusetts, Court of Federal Claims Number 07–0667V.

230. Margaret Khazaal on behalf of Benjamin Khazaal, Victorville, California, Court of Federal Claims Number 07–0669V.

231. Lynda C. Chandler and Vincent D. Capaccio on behalf of V. Valor Capaccio, Harrisonburg, Virginia, Court of Federal Claims Number 07–0670V.

232. Terah and Nicholas Romero on behalf of Nicholas Romero, Jr., San Antonio, Texas, Court of Federal Claims Number 07–0671V.

233. Jamie and George Parisi on behalf of George Bostock Parisi, II, Woodbridge, Virginia, Court of Federal Claims Number 07–0679V.

234. Angela and Mark Pruett on behalf of Paige Pruett, Omaha, Nebraska, Court of Federal Claims Number 07–0681V.

235. Karrie and Jeffrey Adix on behalf of Jesse Adix, Mequon, Wisconsin, Court of Federal Claims Number 07–0683V.

236. Ruth Nancy and David Thornhill on behalf of Blake Anthony Thornhill, Slidell, Louisiana, Court of Federal Claims Number 07–0687V.

237. Jaswant and Manjit Sidhu on behalf of Gurdit Sidhu, Ontario, California, Court of Federal Claims Number 07–0690V.

238. Carol Brandt, Hendersonville, North Carolina, Court of Federal Claims Number 07–0697V.

239. Mary Anne Campbell on behalf of Ryan Campbell, West Islip, New York, Court of Federal Claims Number 07–0701V.

240. Frank Salanitri, Huntington Station, New York, Court of Federal Claims Number 07–0710V.

241. Tyson Hammond on behalf of McKenzie Hammond, Deceased, Grand Forks, North Dakota, Court of Federal Claims Number 07–0716V.

242. Angela and Donald Hunter on behalf of Roman Hunter, Roseville, Michigan, Court of Federal Claims Number 07–0717V.

243. Scott Norstad, Fargo, North Dakota, Court of Federal Claims Number 07–0721V.

244. Mildred Lugo on behalf of Melanie Lugo, Sanford, Florida, Court of Federal Claims Number 07–0722V.

245. Katherine Walker and Helmi Elhadidi on behalf of Adam Elhadidi, Falls Church, Virginia, Court of Federal Claims Number 07–0727V.

246. Elena Kirksey on behalf of Savannah Kirksey, Metairie, Louisiana, Court of Federal Claims Number 07–0733V.

247. Terry and Thomas Biaggi on behalf of Nicholas Yukio Biaggi, Irvington, New York, Court of Federal Claims Number 07–0734V.

248. Julie Tidovsky-James and Fred James on behalf of Ian James, Richmond, Virginia, Court of Federal Claims Number 07–0735V.

249. Khaalidah Knott on behalf of Zaire Knott, Deceased, Newark, New Jersey, Court of Federal Claims Number 07–0736V.

250. Neil Gearin, Medford, Oregon, Court of Federal Claims Number 07–0737V.

251. Janna Neel, New York, New York, Court of Federal Claims Number 07–0745V.

252. David Rosiewicz, New Bedford, Massachusetts, Court of Federal Claims Number 07–0749V.

253. Maryann and Paul Penzi on behalf of Christopher Penzi, Roslyn, New York, Court of Federal Claims Number 07–0750V.

254. Marsha Champagne and Tory Bell on behalf of Stephan H. R. Bell, Deceased, Brooklyn, New York, Court of Federal Claims Number 07–0751V.

255. Ching Tam, Great Lakes, Illinois, Court of Federal Claims Number 07–0752V.

256. Rebecca and Jerime McHerron on behalf of Jack McHerron, Baldwinsville, New York, Court of Federal Claims Number 07–0753V.

257. Jennifer and Mark Krekeler on behalf of Ethan Krekeler, Fairfax, Virginia, Court of Federal Claims Number 07–0758V.

258. Judith Garcia, Houston, Texas, Court of Federal Claims Number 07–0767V.

259. Craig Wallower, New Cumberland, Pennsylvania, Court of Federal Claims Number 07–0772V.

260. Myra Tackett, Prestonburg, Kentucky, Court of Federal Claims Number 07–0781V.

261. Kathleen and David Kubiak on behalf of Darla Rose Kubiak, Fraser, Michigan, Court of Federal Claims Number 07–0783V.

262. Veronica Argueta on behalf of Joshua Argueta, Lynwood, Washington, Court of Federal Claims Number 07–0784V.

263. Kimberly and Daniel Thrasher on behalf of Courtney Thrasher, Deceased, Selma, Alabama, Court of Federal Claims Number 07–0785V.

264. Peter Ramsey, Boston, Massachusetts, Court of Federal Claims Number 07–0786V.

265. Dana and Troy Sturdivant on behalf of Brennan Sturdivant, Madison, Mississippi, Court of Federal Claims Number 07–0788V.

266. Matthew Galloway on behalf of Matthew Roldey Galloway, II, Naples, Florida, Court of Federal Claims Number 07–0792V.

267. Frances L. Gibbs, Salt Lake City, Utah, Court of Federal Claims Number 07–0793V,

268. Josefa Reed on behalf of David Reed, Sterling Heights, Michigan, Court of Federal Claims Number 07–0794V.

269. John Hoogacker on behalf of Travis Hoogacker, New Orleans, Louisiana, Court of Federal Claims Number 07–0795V.

270. Amy Renae Newhouse on behalf of Tyler Newhouse, Richmond, Kentucky, Court of Federal Claims Number 07–0796V.

271. Carol Denise McDaniel and Adegoke Akinsola on behalf of Lindsey Abiola, Akinsola, Deceased, Lake Providence, Louisiana, Court of Federal Claims Number 07–0797V.

272. John Hoogacker on behalf of Trevor Hoogacker, New Orleans, Louisiana, Court of Federal Claims Number 07–0800V.

273. Angie Anderson on behalf of Andreas Pearman, amilla, Georgia, Court of Federal Claims Number 07–0801V.

274. Jessica Engels on behalf of Benjamin Engels, Celebration, Florida, Court of Federal Claims Number 07–0804V.

275. Cherie and Peter Nuttall on behalf of Nathaniel Nuttall, Henderson, Nevada, Court of Federal Claims Number 07–0810V.

276. Vivian and Charles Acquaah on behalf of Tyra Acquaah, Katy, Texas, Court of Federal Claims Number 07–0813V.

277. Kimberly Ann Geer and Richard Roy Russell on behalf of Richard Roy Russell, III, Edgemoor, South Carolina, Court of Federal Claims Number 07–0814V.

278. Joanne and George Stevens on behalf of Samuel Stevens, West Palm Beach, Florida, Court of Federal Claims Number 07–0818V.

279. Joanne and George Stevens on behalf of Anthony Stevens, West Palm Beach, Florida, Court of Federal Claims Number 07–0819V.

280. Vivian and Charles Acquaah on behalf of Stacy Acquaah, Katy, Texas, Court of Federal Claims Number 07–0820V.

281. Christina Balls on behalf of Isaac J. Balls, Bountiful, Utah, Court of Federal Claims Number 07–0821V.

282. Susan Moore, Commack, New York, Court of Federal Claims Number 07–0833V.

283. John McAvoy, Hanscom AFB, Massachusetts, Court of Federal Claims Number 07–0834V.

284. Joshua Beckner on behalf of Joel Beckner, Deceased, Omaha, Nebraska, Court of Federal Claims Number 07–0835V.

285. Juli Harden on behalf of Michael Miles, II, Indianapolis, Indiana, Court of Federal Claims Number 07–0836V.

286. Michaela and Craig Morgan on behalf of Maxwell Morgan, Lake Tahoe, California, Court of Federal Claims Number 07–0853V.

287. Rick Schweitzer on behalf of Jesse Schweitzer, Deceased, Arkadelphia, Arkansas, Court of Federal Claims Number 07–0856V.

288. Laura Conway on behalf of Cassidy Conway, Lansing, Michigan, Court of Federal Claims Number 07–0857V.

289. Nicolle Hurd on behalf of Micah Hurd, Great Falls, Montana, Court of Federal Claims Number 07–0860V.

290. Timothy Do on behalf of William Do, Mansfield, Texas, Court of Federal Claims Number 07–0864V.

291. Susan and Michael Neighbors on behalf of Nicholas Neighbors, Baltimore, Maryland, Court of Federal Claims Number 07–0865V.

292. Michelle Wilkinson, Worcester, Massachusetts, Court of Federal Claims Number 07–0866V.

293. Jeannette Day, Austin, Texas, Court of Federal Claims Number 07–0868V.

294. Anna Bogojevic on behalf of Stevan Bogojevic, Lake Forest, Illinois, Court of Federal Claims Number 07–0869V.

295. Sandra Cassidy on behalf of Daniel Styka, Erie, New York, Court of Federal Claims Number 07–0870V.

296. Leslie and John Petro on behalf of Dominic Petro, Annapolis, Maryland, Court of Federal Claims Number 07–0880V.

297. Linda Gevargis on behalf of Darian Gevargis, Palmdale, California, Court of Federal Claims Number 07–0882V.

298. Brian Dobben on behalf of Levi Dobben, Flossmoor, Illinois, Court of Federal Claims Number 07–0883V.

299. Sandra Kay Hunter on behalf of Kasey Lynn Welch, Lake Park, Georgia, Court of Federal Claims Number 07–0885V.

300. Rhonda and Doug Paluck on behalf of Karl Paluck, Bismarck, North Dakota, Court of Federal Claims Number 07–0889V.

301. Christine and Christopher Wright on behalf of Colin James Wright,

Norwalk, Connecticut, Court of Federal Claims Number 07–0890V.

302. Roger Feldman, Weston, Massachusetts, Court of Federal Claims Number 07–0891V.

303. Elisabeth and Bernard Hil Bowman on behalf of Kaylin Bowman, Dallas, Texas, Court of Federal Claims Number 07–0892V.

304. Tieu Binh Le, Monahans, Texas, Court of Federal Claims Number 07–0895V.

Dated: September 12, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–22129 Filed 9–22–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for Proposed Collection Comment Request: The Effectiveness of the NIH Curriculum Supplements Programs

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Science Education, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection Title: The Effectiveness of the NIH Curriculum Supplements Programs Survey.

Information Collection Request: New.

Need and Use of Information Collection: The survey will attempt to assess customer demographics and their satisfaction with the NIH curriculum supplements in presenting science in a more engaging and interactive way. The supplements help K–12 educators teach science by featuring the latest NIH research and utilized research-based instructional methods. A typical supplement contains two weeks of student activities on the science behind a health topic, such as cancer, sleep or obesity. Web-based simulations, animations and experiments enhance the ''pencil and paper'' activities. In addition to developing and distributing the supplements, OSE conducts professional workshops to help teachers successfully implement these lessons with their students. Since January 2000, over 6,000 teachers have attended an OSE workshop. Assessing the effectiveness of the NIH curriculum supplements and teacher workshops is critical to determining if OSE is successfully fulfilling its mission. OSE has the database infrastructure in place to easily collect data from supplement requesters and workshop attendees. At present, we do not have clearance to contact our customers to determine how NIH resources are meeting their educational needs.

BURDEN TABLE

Type of respondent: survey title	Number of respondents	Frequency of response	Average time per response (hours)	Hour burden per year (hours)
Supplement requestor	16,000	1	0.17	910
Workshop Teacher: initial survey	2,000	1	0.17	117
Workshop Teacher: in-depth survey	200	1	0.5	34
Totals	18,200	n/a	n/a	1,061

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) ways to enhance the quality, utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to NIH: Written comments and/or suggestions regarding the item(s) contained in this notice should be directed to the: Office of Science Education, National Institutes of Health, 6100 Executive Boulevard, Suite 3E01, Bethesda, MD 20892, Attention: Dr. Dave Vannier. To request more information on the proposed project or to obtain a copy of the data collection plans and survey, contact: Dr. Vannier at the above address, or call 301–496–8741, or e-mail your request including your address to: *vannierd@od.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: September 16, 2008.

David Vannier,

Office of Science Education, National Institutes of Health.

[FR Doc. E8–22315 Filed 9–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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, National Institute of Neurological Disorders and Stroke.

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 National Institute of Neurological Disorders and Stroke, 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, National Institute of Neurological Disorders and Stroke.

Date: October 5–7, 2008.

Time: October 5, 2008, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Time: October 6, 2008, 8:30 a.m. to 2:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Time: October 6, 2008, 3:10 p.m. to 8:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Time: October 7, 2008, 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders & Stroke, NIH, 35 Convent Drive, Room 6a 908, Bethesda, MD 20892, 301–435–2232, *koretskya@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22309 Filed 9–22–08; 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will be a decision whether NCI should support request(s) and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Rapid Access to Intervention Development.

Date: November 5–6, 2008.

Time: 1 p.m.–5 p.m.

Agenda: To evaluate the Rapid Access to Intervention Development Portfolio.

Place: National Institutes of Health, Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Phyllis G. Bryant, Executive Secretary, Program Analyst, Developmental Therapeutics Program, National Cancer Institute, NIH, 6130 Executive Boulevard, Rm. 8022, Bethesda, MD 20892, (301) 496–8720, *pb45q@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: September 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22316 Filed 9–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee.

Date: October 14–15, 2008.

Time: 4 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, Scientific Review Office, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 15, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–22057 Filed 9–22–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Office of Biotechnology Activity; Recombinant DNA Research; Notice of a Meeting of an NIH Blue Ribbon Panel

There will be a meeting of the NIH Blue Ribbon Panel to advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories (NEIDL). The meeting will be held on Tuesday, October 14, 2008, at the Roxbury Center for the Arts, Hibernian Hall, 184 Dudley Street, Roxbury, MA

02119 from approximately 6:30 p.m. to 9:30 p.m.

Discussions will focus on principles and strategies for effective community engagement. There will also be time allotted on the agenda for public comment.

Sign up for public comment will begin at approximately 5:30 p.m. on October 14, 2008. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the address below.

For further information concerning this meeting contact Ms. Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of the Director, National Institutes of Health, Mail Stop Code 7985, Bethesda, MD 20892–7985, telephone 301–496–9838, e-mail *lewallla@od.nih.gov.* Background information may be obtained by contacting NIH OBA by e-mail *oba@od.nih.gov.*

Dated: September 16, 2008.

Kelly R. Fennington,

Special Assistant to the Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. E8–22313 Filed 9–22–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0961]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0073

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0073, Alteration of Unreasonable Obstructive Bridges. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 24, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–0961], please use only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand deliver between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments.

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0961], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–0961] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request.

Title: Alteration of Unreasonable Obstructive Bridges.

OMB Control Number: 1625–0073.

Summary: This collection of information is used to determine if a bridge is unreasonably obstructive.

Need: Sections 494/502, 511, 513, 514, 516, 517, 521, 522, and 523 of 33 U.S.C. authorize the Coast Guard to alter bridges and causeways that go over navigable waters of the United States and are deemed to be unreasonably obstructive. Coast Guard regulations on the alteration of unreasonably obstructive bridges are located in 33 CFR part 116.

Respondents: Public and private owners of bridges over navigable waters of the United States.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 180 hours to 240 hours per year.

Dated: September 15, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–22155 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2008–0929]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0040

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting a revision of its approval for the following collection of information: 1625–0040, Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before November 24, 2008.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2008–0929], please use only one of the following means:

(1) Online: *http://www.regulations.gov.*

(2) Mail: Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand deliver: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

The DMF maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

A copy of the complete ICR is available through this docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this information collection request should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2008–0929], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this notice as being available in the docket. Enter the docket number for this notice [USCG–2008–0929] in the Search box, and click ''Go >>.'' You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Continuous Discharge Book, Application, Physical Exam Report, Sea Service Report, Chemical Testing, Entry Level Physical.

OMB Control Number: 1625–0040.

Summary: Title 46 U.S.C. 7302(b) authorizes the Coast Guard to issue a Continuous Discharge Book (CG Form 719A) upon request from an individual. Title 46, Code of Federal Regulations (CFR), paragraphs 10.205(a), 10.207(a), 10.209(a)(1), 12.02–9(a), and 12.02–27(a)(1) mandate that each applicant for a license, certificate of registry, or

merchant mariner document shall make written application on a Coast Guard furnished form (CG Form 719B). 46 CFR, sections 10.205(d), 12.05–5, and 12.15–5 require each applicant requesting a license or merchant mariner document must present a completed Coast Guard physical examination report (CG Form 719K) executed by the physician. Sections 10.207(e)(2) and 10.209(d)(2) of 46 CFR state the report may be required. Further, paragraph 10.211(a) mandates criteria (CG Form 719S) for documenting sea service on vessels of less than 200 gross registered tons. Paragraphs 10.202(i) and 12.02–9(f) mandates that each applicant shall produce evidence (CG Form 719P) of having passed a chemical test for dangerous drugs. Paragraph 12.02–17(e) requires entry-level merchant mariner document applicants to provide a statement from a qualified practitioner attesting to the applicant's medical fitness to perform the functions for which the document is issued (CG Form 719K/E).

Need: The Coast Guard will use the information collected solely for the purposes of determining eligibility for issuance of a merchant mariner credential(s), *i.e.* license, certificate of registry, or merchant mariner document.

Forms: CG Form 719A, Continuous Discharge Book; CG Form 719B, Application for License as Officer, Staff Officer, Operator, and Merchant Mariner's Document; CG Form 719K, Merchant Mariner Physical Examination Report; CG Form 719K/E, Entry Level Physical; CG Form 719S, Small Vessel Sea Service Form; and CG Form 719P, DOT/USCG Periodic Drug Testing Form.

Respondents: Individuals and households.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 329,356 hours to 10,833 hours a year.

Dated: September 15, 2008.

D.T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E8–22247 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 2841 Carolina Beach Rd. Suite 3B, Wilmington, NC 28412, has been approved to gauge and accredited to test petroleum and petroleum products and organic chemicals for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on June 05, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: September 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–22217 Filed 9–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 2321 Burnett Blvd., Wilmington, NC 28401, has been approved to gauge and accredited to test petroleum and petroleum products and organic chemicals for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on June 04, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: September 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–22216 Filed 9–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 2310 Highway 69 North, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products and organic chemicals for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on March 28, 2008. The next triennial inspection date will be scheduled for March 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: September 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–22219 Filed 9–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 12650 McManus Blvd, Suite 103, Newport News, VA 23602, has been approved to gauge and accredited to test petroleum and petroleum products and organic chemicals for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 07, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, (202) 344–1060.

Dated: September 16, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–22221 Filed 9–22–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; File No. OMB–6, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 18, 2008, Vol. 73 No. 139 41369, allowing for a 60-day comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until October 23, 2008.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. 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 currently approved information collection.

(2) Title of the Form/Collection: Emergency Federal Law Enforcement Assistance.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: No Form Agency Number; (File No. OMB–6) U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Section 404(b) of the Immigration and Naturalization Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Lee Shirkey, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 353–2266.

Dated: September 18, 2008.

Lee Shirkey,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E8–22252 Filed 9–22–08; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.: FR–5194–N–15]

Notice of Proposed Information Collection for Public Comment for Housing Choice Voucher (HCV) Family Unification Program (FUP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

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 24, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and 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 information on the data collected.

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 submissions of responses.

This Notice also lists the following information:

Title of Proposal: Housing Choice Voucher (HCV) Family Unification Program (FUP).

OMB Control Number: 2577-pending.

Description of the Need for the Information and Proposed Use: The Family Unification Program (FUP) is a program which was established by section 8(x) of the United States Housing Act of 1937 (42 U.S.C. 1437(X)) provides housing choice vouchers to PHAs to assist families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

Vouchers awarded under the FUP are administered by PHAs under HUD's regulations for the HCV program (24 CFR part 982).

Agency form numbers: HUD–52515 (OMB Approval # 2577–0169), HUD 50058 (OMB Approval # 2577–0083), HUD 2998, HUD 2993 and HUD 96011 (OMB Approval # 2535–0118), SF–424 (OMB Approval # 0348–0043), SF LLL (OMB Approval # 0348–0043).

Members of the Affected Public: Public Housing Agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The total burden for data collection is estimated at 5,357.2 hours. It is anticipated that approximately 200 PHAs will apply for FUP vouchers each year the program is funded.

The estimate of the total annual cost burden to respondents/recordkeepers resulting from the collection of this information is: 5,357.2 burden hours × $18/hour = $96,069.60.

* Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden. The burden hours for this collection is 5,357.20.

Status of the Proposed Information Collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 17, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Program and Legislative Initiatives.

[FR Doc. E8–22145 Filed 9–22–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–25]

Notice of Proposed Information Collection: Comment Request; Treatment Builder's Certification and Guarantee, and the new Construction Subterranean Termite Soil Treatment Record

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

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 24, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Margaret E. Burns, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction Subterranean Termite Soil Treatment Record.

OMB Control Number, if applicable: 2502–0525.

Description of the need for the information and proposed use: HUD's collection of this information permits the NPCA–99A to establish the builder's warranty against termites for a period of one year bringing it into conformance with other builder warranties HUD requires for newly constructed housing. The NPCA–99B is submitted to the builder of new homes when the soil treatment method is used for termite prevention.

Agency form numbers, if applicable: HUD–NPCA–99A, and HUD–NPCA–99B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 63,123 generating 126,246 annual response, frequency of response is on occasion, the estimated time per response varies from approximately 5 minutes to 15 minutes, and the estimated annual burden hours is 21,540.

Status of the proposed information collection: Currently approved.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 8, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E8–22143 Filed 9–22–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–30]

Privacy Act; Notification of New Privacy Act System of Records, Housing Counseling Research Data Files

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Establishment of a new Privacy Act system of records.

SUMMARY: The Department of Housing and Urban Development HUD proposes to establish a new record system to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new system of record is the Housing Counseling Research Data Files. The records system will be used by HUD's Office of Policy Development and Research (PD&R) to conduct research and evaluation study of certain participants of HUD-funded Housing Counseling Agencies. Refer to the ''Objective'' caption to obtain detailed information about the purpose of this study.

DATES: *Effective Date:* This action shall be effective without further notice on October 23, 2008 unless comments are received that would result in a contrary determination.

Comments Due Date: October 23, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4178, Washington, DC 20410, telephone number (202) 402–8073. (This is not a toll-free number.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish a new system of records as identified as Housing Counseling Data Files.

Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be afforded a 30-day period in which to comment on the new system of records, and requires published notice of the existence and character of the system of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining

Records About Individuals,'' July 25, 1994; 59 FR 37914.

System Security Measures: The availability and data in Housing Counseling Data Files are important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the use of the information to HUD's Abt Associates Inc. contractors' oversight responsibility, vulnerabilities and corresponding security measures to ensure data protection as follows: Each employee at IMPAQ has a unique identifier. There is no general company ID that can be used by multiple employees to log in to the system. It is a violation of IMPAQ security policy to share usernames and logins with anyone else. When an employee leaves IMPAQ, part of the exit checklist is to disable the employee's account, so that the employees can no longer log in and remote access privileges are also disabled. Access rights will be selectively granted, depending on duties and need-to-know. Full access rights to all data in the system will be granted to fewer than 5 users, primarily project managers at IMPAQ and Abt Associates. Limited access rights will be granted to all counselors. Counselors will only have the ability to review records pertaining to clients of their agency. No disks or tapes are involved in the system. The consent forms validating the applicant's participation in the study will be scanned into electronic files that will be encrypted and then provided to Abt Associates via a secure, password protected HTTPS site. The baseline questionnaires will be entered into a secure electronic database that is encrypted at the database level. Both the consent forms and baseline questionnaires will then be stored at a secure off-site facility for the duration of the project. All other data will be entered into the database by counselors via a secure Web site so that all data transmitted over the Internet are encrypted. Counselors will only able to access data under their jurisdiction; downloading of data is not permitted from the actual system. Counselors would access the system through the Internet via Internet Explorer Web browser. The system requires a username and password to gain access, and only authorized counselors or staff at each agency would be provided with a username and password. Backup is performed through an online vendor who backs up data on a frequent, regular basis in a manner such that the data are encrypted while in transmission over the Internet. No hard-copy printouts containing personal information are anticipated to be generated on a regular basis. If any are generated as a result of ad hoc report requests, they will be carefully handled and shredded as soon as they are no longer needed. If these reports are needed for more than 1 day, they will be kept locked in a locked filing cabinet or in other storage rooms at IMPAQ or at off-site storage vendors which are heavily secured. Besides physical security of data, IMPAQ has in place procedures for handling datasets with personal identifiers that are similar to FedEx tracking system in that personal signatures by members of the IT department or the research team on the project are required at all stages of data handling until the personal identifiers are stripped and replaced with unique identifiers that are of no use to a potential identity thief. All IMPAQ staff are trained in security procedures and policies. Multiple layers of security are built into the IMPAQ computing infrastructure to maximize security.

Data Quality: Client participating in the study will be asked to complete a baseline questionnaire at the time they are enrolled in the study. Each counseling agency participating will be asked to complete service tracking surveys, for each client each time that client is assisted, and counseling information surveys. The baseline questionnaire and surveys include Name, address, household demographics (age, gender, race, ethnicity, income, assets, marital status, education, current work status, number of dependents, living situation and costs); financial information (gross monthly income, amount in savings, amount in retirement accounts, monthly rent paid, monthly utilities paid, mortgage payment status); Social Security Number (SSN), homeownership status, program status information, counseling agency ID, employment history of counselor, Born in U.S., English as primary language, homeownership status, foreclosure status; name, address, and telephone numbers of two relatives or friends for future follow-up. This data collection serves two goals (1) it will provide more detailed information on the characteristics of key groups of housing counseling clients, the specific services they receive from counseling agencies, and the short-term outcomes realized from their counseling (2) it will lay the groundwork for a follow-up survey of these same clients to look at longer-term outcomes (3) it will also help lay the groundwork for an impact evaluations or pre-purchase housing counseling by providing experience with enrolling counseling clients in a study, collecting information on the counseling assistance they receive, and tracking them over time.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Lisa Schlosser,

Chief Information Officer.

HUD/PDR–10

SYSTEM NAME:

Housing Counseling Research Data Files.

SYSTEM LOCATION:

Housing Counseling Research Data Files servers are in Cambridge Massachusetts. System is maintained and operated by Abt Associates, IMPAQ International and software is loaded on their desktop computer at the Columbia Maryland location. The client system database software will be installed on secure servers at IMPAQ International in Columbia, MD. Project staff at IMPAQ will access the servers via the IMPAQ computer network infrastructure, again with authorization (username and password) required.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals selected in a random sample of clients participating in housing counseling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, household demographics (age, gender, race, ethnicity, income, assets, marital status, education, current work status, number of dependents, living situation and costs); financial information (gross monthly income, amount in savings, amount in retirement accounts, monthly rent paid, monthly utilities paid, mortgage payment status); Social Security Number, homeownership status, program status information, counseling agency ID, employment history of counselor, Born in U.S., English as primary language, homeownership status, foreclosure status; name, address, and telephone numbers of two relatives or friends for future follow-up.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 501, 502, Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z-1, 1701z-2.

PURPOSE:

To conduct an outcome evaluation study on the outcomes realized by clients of HUD-funded Housing Counseling Agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent a

mortgage delinquency (foreclosure mitigation clients). The study is designed to gather statistically accurate information on outcomes realized by the clients of the participating housing counseling agencies. The study focuses on two groups of clients: (1) Clients seeking assistance to purchase a home (pre-purchase clients) and (2) clients seeking to resolve or prevent a mortgage delinquency (foreclosure mitigation clients). Up to Thirty housing counseling agencies at random will be recruited to participate in this study. The selected agencies will provide samples of data from each of the two groups, selected. The data collected through the study will support analysis of not just the frequency of different client outcomes, but also the association between these outcomes and client characteristics, client circumstances, and the extent of services received. Additionally, the proposed study will fulfill two important needs for HUD and the counseling field. First, it will provide systematic information on the outcomes realized by counseling clients and how these outcomes vary with the characteristics or clients and the services they receive. The study will also lay the groundwork for a subsequent pre-purchase impact evaluation by testing data collection procedures to be used to enroll clients, gather information on the characteristics of the services they receive, and track them over time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. A.

A. To individuals under contract to HUD or under contract to another agency with funds provided by HUD—for the preparation of studies and statistical reports directly related to the management of HUD's Housing Counseling Programs.

B. To future researchers selected by HUD to carry out the objectives of HUD's Housing Counseling Program in aggregate form without individual identifiers—name, address, social security number—for the performance of research and statistical activities of the Housing Counseling Programs.

C. To authorized social science researchers participating in HUD's Housing Counseling Program in aggregate form without individual identifiers—name, address, social security number—for the performance of research and statistical activities of the Housing Counseling Programs.

D. To participating counseling agencies for only part of the database to gather data identifying information that they gather from their own clients participating in the study and not the part of the database that contains social security numbers, birth dates, or data on the housing counseling clients of other agencies.

E. To credit bureaus to draw credit reports on the individuals selected to participate in the Housing Counseling Outcome Evaluation.

F. To HUD's Housing Counseling System, including the Client Activity Reporting System (CARS) to match sample clients' baseline, service tracking, and outcome data gathered during the course of this research to data reported on those clients in CARS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and electronic files stored on contractors' secured servers and computers.

RETRIEVABILITY:

Name, address.

SAFEGUARDS:

Manual files will be kept in sealed envelopes, in locked cabinets, in locked offices; computer records will be maintained in a separate secured area accessible only to authorized personnel with passwords. The consent forms will be scanned into electronic files that will be encrypted and then provided to Abt Associates via a secure, password protected HTTPS site. When the consent forms are used to obtain credit reports for the study, a copy of the consent form will be provided using the same secure HTTPS site and encrypted files to the agency that obtains the credit reports. The baseline questionnaires will be entered into an electronic database that will be encrypted at the database level and accessible only to authorized personnel with passwords. Both the consent forms and baseline questionnaires will then be stored at a secure off-site facility for the duration of the project.

RETENTION AND DISPOSAL:

All personal identifiers will be destroyed approximately six months after the research is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Mark Shroder, Acting Director of the Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone Number (202) 402–5922.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence or records, contact Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, in accordance with the procedures in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants who want to appeal initial agency determination appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410; and

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

The original records are transferred from information obtained from *baseline questionnaires* for participating clients and *service tracking surveys* on counseling services received by those clients from the record subjects, participating counseling agencies, and credit bureaus.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–22144 Filed 9–22–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0153

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from persons who seek to acquire the Federally-owned (reserved) mineral interests underlying their surface estate. BLM collects this information to verify

that the applicant is the surface owner that overlies the Federally-owned mineral rights and that statutory requirements for their conveyance are met. The regulations under 43 CFR Part 2720 authorize BLM to collect information (no specific form is required) to convey Federally-owned mineral interests to surface owners if certain conditions are met.

DATES: You must submit your comments to the address below no later than November 24, 2008. Comments received or postmarked after this date may not be considered.

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

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., (Attention: 1004–0153), Washington, DC 20240.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036.

E-mail: information_collection@blm.gov (Attn.: 1004–0153).

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday except Federal holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Division of Lands, Realty and Cadastral Survey, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 209 of the Federal Land Policy and Management Act of 1976 and implementing regulations at 43 CFR part 2720 establish procedures for BLM to convey Federally-owned (reserved) mineral interests to non-Federal surface ownership, if the value of the surface use or planned use exceeds the value of the mineral rights, or that there are no minerals there, and that the mineral rights prevent beneficial surface use. The regulations authorize BLM to collect this information (no specific form is required) to determine if BLM may convey the Federally-owned mineral interests to surface owners who apply and meet the statutory requirements. We list in 43 CFR 2720.1–2 the specific information requirements you must submit when applying for a conveyance of Federally-owned mineral interests. Without this information, BLM would not be able to analyze and approve applications to convey Federally-owned mineral interests that interfere with beneficial surface uses.

Based upon BLM experience administering the regulations, we estimate the public reporting information collection burden to be 10 hours per application. The respondents are surface owners in which the mineral interests are reserved or owned by the United States. The estimated number of responses per year is 30 and the total annual burden is 300 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: September 18, 2008.

Ted R. Hudson,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E8–22244 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0004

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from those persons who submit Form 2520–1 to apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The BLM uses this information to determine if the applicant is eligible to make a desert-land entry under the appropriate land entry laws.

DATES: You must submit your comments to BLM at the address below on or before November 24, 2008. BLM will not necessarily consider any comments postmarked or received after the above date.

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

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., (Attention: 1004–0004), Washington, DC 20240.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036.

E-mail: information_collection@blm.gov (Attn.: 1004–0004)

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Division of Lands, Realty and Cadastral Survey, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Congress passed the Desert Land Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327–329) to encourage and promote the economic development of the arid and semiarid public lands. Through the Act, you may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States.

The regulations in 43 CFR part 2520 provide guidelines and procedures to obtain public lands under the Act. You qualify to file a desert-land entry if you are a citizen of the United States; 21 years old; and a resident in the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington, or Wyoming (no residency is required in the State of Nevada).

You may apply for one or more tracts of public lands totaling no more than 320 acres. The land must be surveyed or unsurveyed, unappropriated, non-mineral, and non-timber. The lands must be suitable for agricultural purposes and more valuable for that purpose than any other. The tracts of land must be sufficiently close to each other to manage satisfactorily as an economic unit.

You must locate lands you feel can be economically developed and determine the legal land description. You must contact the BLM State Office where the lands are located and verify the lands are available for desert-land entry application.

When BLM receives the application, we will examine your application for completeness and accuracy and classify the lands included in the application. BLM will approve your application of the lands are classified suitable for desert-land entry or reject your application if the lands are classified unsuitable for desert-land entry.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing the Form 2520–1 is 2 hours. BLM estimates that we receive approximately 3 applications annually, with a total annual burden of 6 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 2520–1 by contacting the person identified under for further information contact.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: September 18, 2008.

Ted Hudson,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E8–22250 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–08–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona:

The plat representing the survey of the metes-and-bounds surveys in sections 7 and 8, Township 21 North, Range 3 East, accepted January 16, 2008, and officially filed January 22, 2008, for Group 1020, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the north boundary and the corrective dependent resurveys of a portion of the subdivisional lines, a portion of the 1892 and 1973–75 meanders of the left bank of the Verde River through section 5, a portion of the subdivision of the northwest quarter of section 5, and a portion of a metes-and-bounds survey in the northwest quarter of section 5, Township 13 North, Range 5 East, accepted January 10, 2008, and officially filed January 15, 2008, for Group 916, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 28, Township 20 North, Range 7 East, accepted November 23, 2007, and officially filed November 29, 2007, for Group 1016, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of the Fourth Guide Meridian East (east boundary), the south and north boundaries and the subdivisional lines and the survey of the subdivision of all sections, Township 22 North, Range 16 East, accepted December 6, 2007, and officially filed December 13, 2007, for Group 958, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the south, west and north boundaries, and the subdivisional lines, and the subdivision of all sections, Township 23 North, Range 18 East, accepted April 7, 2008, and officially filed April 11, 2008, for Group 1015, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of the Sixth Standard Parallel North (south boundary), Township 25 North, Range 17 East, the Sixth Standard Parallel North (south boundary) Township 25 North, Range 18 East, which are identical with portions of the Hopi-Navajo Partition Line, Segment ''A'' and the dependent resurvey of portions of the Hopi-Navajo Partition Line, Segment ''A'', the east and west boundaries and the subdivisional lines and the subdivision of certain sections and metes-and bounds surveys, Township 24 North, Range 18 East, accepted September 2, 2008, and officially filed September 5, 2008, for Group 1023, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The supplemental plat of section 6, Township 30 North, Range 18 East, accepted August 14, 2008, and officially filed August 19, 2008, for Group 887, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of the south and west boundaries, the subdivisional lines, and the subdivision of sections 6, 24, 32 and 34, Township 22 North, Range 19 East,

accepted September 2, 2008, and officially filed September 5, 2008, for Group 1024, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the Hopi-Navajo Partition Line, Segment ''D'' and the survey of a portion of the south boundary and a portion of the subdivisional lines, Township 35 North, Range 19 East, accepted March 13, 2008, and officially filed March 19, 2008, for Group 1026, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the east boundary, Hopi Indian Reservation, Executive Order dated December 16, 1882, and the survey of portions of the south and north boundaries and subdivisional lines, and a metes-and-bounds survey of Tract 37, Township 27 North, Range 22 East, accepted October 30, 2007, and officially filed November 6, 2007, for Group 986, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The supplemental plat of Tract 37 in sections 30 and 31, Township 27 North, Range 23 East, accepted October 30, 2007, and officially filed November 6, 2007, for Group 986, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (2 sheets) representing the dependent resurvey of the Sixth Guide Meridian East (east boundary) and the survey of the subdivisional lines, Township 26 North, Range 24 East, accepted January 11, 2008, and officially filed January 17, 2008, for Group 987, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the subdivisional lines, Township 23 North, Range 27 East, accepted January 11, 2008, and officially filed January 17, 2008, for Group 886, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 14 and the subdivision of sections 4, 6, 10, 22, 23, 27, 28 and 34, and metes-and-bounds surveys in sections 14, 22 and 23, Township 21 North, Range 28 East, accepted January 25, 2008, and officially filed January 31, 2008, for Group 1008, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the west, south and north boundaries, and the subdivisional lines, Township 35 North, Range 28 East, accepted April 15, 2008, and officially filed April 17, 2008, for Group 1019, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (8 sheets) representing the dependent resurvey of a portion of the south, west and north boundaries and the subdivisional lines and the subdivision of sections and metes-and-bounds surveys, Township 22 North, Range 30 East, accepted April 29, 2008, and officially filed May 9, 2008, for Group 920, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the corrective resurvey of a portion of the west boundary, a portion of the subdivisional lines, and a portion of the metes-and-bounds surveys, Township 22 North, Range 31 East, accepted January 25, 2008, and officially filed January 31, 2008, for Group 899, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and portions of Tract Numbers 38 and 39, the subdivision of sections 12 and 13 and a metes-and-bounds survey in section 12, Township 13 North, Range 3 West, accepted February 27, 2008, and officially filed March 5, 2008 for Group 1027, Arizona.

This plat was prepared at the request of the United States Forest Service.

The supplemental plat of section 32, Township 27 North, Range 14 West, accepted August 14, 2008, and officially filed August 19, 2008, for Group 9103, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat (2 sheets) representing the dependent resurvey of a portion of the west boundary of the Luis Maria Baca Grant, Float No. 3 and a portion of the subdivisional lines and the metes-and-bounds survey of the exterior boundary of the Tumacacori National Historical Park, Township 21 South, Range 13 East, accepted December 4, 2007, and officially filed December 7, 2007 for Group 954, Arizona.

This plat was prepared at the request of the National Park Service.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427.

Gary D. Knoff,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–22291 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1910–5EML], ES–055520 Group 28, Maine

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Maine.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: The survey was requested by the Bureau of Indian Affairs.

The plat represents the dependent resurvey and survey of lands held in trust by the United States of America for the Penobscot Indian Nation in Lakeville Plantation, North of Bingham's Penobscot Purchase, Penobscot County, Maine. The survey was accepted on September 11, 2008.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information. If BLM receives a protest against this survey, as shown on the plat, prior to the date of official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we accepted or dismissed all protests and they have become final, including decisions on appeals. Copies of the plat will be made available upon request and prepayment of the reproduction fees.

Dated: September 16, 2008.

Ronald J. Eberle,

Acting Chief Cadastral Surveyor.

[FR Doc. E8–22191 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–ET, CACA 46634]

Public Land Order No. 7716; Withdrawal of Federal Lands and Transfer of Jurisdiction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 472 acres of lands from surface entry and mining, and transfers jurisdiction of the lands to the U.S. Fish and Wildlife Service to be managed as part of the Sacramento River National Wildlife Refuge. The lands will remain open to mineral and geothermal leasing, and mineral material sales.

DATES: September 23, 2008.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886; 916–978–4675.

SUPPLEMENTARY INFORMATION: The lands, comprising Todd and Foster Islands, protect riparian habitat along the Sacramento River which is critically important in the protection of fish, migratory birds, plants, and river system health. This order transfers administrative jurisdiction to the U.S. Fish and Wildlife Service to be managed pursuant to the authority of the Fish and Wildlife Act of 1956, 16 U.S.C. 742aa–742j–2 (2000), as amended, and the Endangered Species Act of 1973, 16 U.S.C. 1531–1543 (2000), as amended.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws, 30 U.S.C., Ch. 2 (2000):

Mount Diablo Meridian

Foster Island

T. 23 N., R. 2 W.,
Sec. 11, lots 4 and 5;
Sec. 14, lots 1 to 5, inclusive;
Sec. 15, lots 1 to 5, inclusive.

The area described contains 221.89 acres in Tehama County.

Todd Island

A portion of Lot 40 of Rancho El Primer Canon or Rio de los Berrendos Land Grant, in Tehama County, California, and in T. 26 N., R. 2 W., MDM, more particularly described as follows: Parcels one, two, three, and four, described by metes and bounds, in a Corporation Grant Deed recorded in Book 602 at Page 620 of the Official Records of Tehama County, California on September 11, 1972.

The area described contains approximately 250 acres in Tehama County.

The two islands aggregate approximately 472 acres in Tehama County.

2. Subject to valid existing rights, the administrative jurisdiction of the lands described in Paragraph 1 and their related resource uses are hereby transferred to the U.S. Fish and Wildlife Service, to be managed as part of the Sacramento River National Wildlife Refuge and shall thereafter be subject to all laws and regulations applicable thereto.

Dated: September 8, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–22241 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK010–1410–FP]

Notice of Realty Action; Airport Lease, Sitka, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The State of Alaska, Department of Transportation and Public Facilities (proponent) submitted an application for a 20 year lease for 222 acres to continue and maintain safe operations at the Sitka Rocky Gutierrez Airport in Sitka, AK pursuant to 49 U.S.C. 211; 43 U.S.C. 1701 *et seq.* and regulations at 43 CFR part 2911.

DATES: Interested parties may submit comments until November 7, 2008.

ADDRESSES: Mail comments to Jim Fincher, Field Manager, Anchorage Field Office, 4700 BLM Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Harrison Griffin, (907) 267–1210 or (800) 478–1263.

SUPPLEMENTARY INFORMATION: This is a notice of an application for the issuance of an Airport Lease. No additional proposals will be accepted. The proponent will reimburse the United States for reasonable administrative fees and other costs incurred by the United States in processing the proposed lease. The proposed lease would authorize the proponent's current infrastructure and future improvements to remain on the land.

The proposed lease for 222 acres would be offered to the applicant for a term of 20 years and would require rent (if applicable) to be paid to the United States at market value. While the 20-year lease is in effect, allowing operations to continue as they have, the Bureau of Land Management (BLM), Federal Aviation Administration, Alaska Department of Transportation and Public Facilities will coordinate the permanent conveyance of the aforementioned 222 acres. In the absence of a timely objection, this proposal may become the final decision of the Department of the Interior. The 222 acres encompasses a large portion of Japonski Island and, to a lesser extent, Whiting Harbor, located within the Copper River Meridian, T. 56 S., R. 63 E., Sections 2 and 3.

Dated: September 15, 2008.

James M. Fincher,

Anchorage Field Office Manager,.

[FR Doc. E8–22238 Filed 9–22–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

DATES: *Effective Date:* January 1, 2009.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of 1 year or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2008. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID number	Concessioner name	Park
CC–NACCOO4–89	Landmark Services Tourmobile, Inc	National Capital Parks—Central

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: September 21, 2008.

Katherine H. Stevenson,

Assistant Director, Business Services.

[FR Doc. E8–22079 Filed 9–22–08; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–658]

In The Matter of: Certain Video Game Machines and Related Three-Dimensional Pointing Devices; 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 August 20, 2008, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hillcrest Laboratories, Inc., of Rockville, Maryland. The complaint 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 video game machines and related three-dimensional pointing devices that infringe certain claims of U.S. Patent Nos. 7,139,983; 7,158,118; 7,262,760; and 7,414,611. 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 a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

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 September 16, 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 video game machines and related three-dimensional pointing devices that infringe one or more of claims 1, 2, 5, 6, 8, 11, 12, 15, 16, 18, 19, 22, and 23 of U.S. Patent No. 7,139,983; claims 1–4 of U.S. Patent No. 7,158,118; claims 23, 24, 28, 30, 38–40, 45, 46, 50, 52, and 60–62 of U.S. Patent No. 7,262,760; and claims 20, 21, 25, 27, 34, 58, 59, 63, 65, 72, 77, 78, 82, 84, and 91 of U.S. Patent No. 7,414,611, 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—Hillcrest Laboratories, Inc., 15245 Shady Grove Road, Suite 400, Rockville, Maryland 20850–3222.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nintendo Co., Ltd., 11–1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601–8501, Japan.

Nintendo of America, Inc., 4820 150th Avenue, NE., Redmond, Washington 98052.

(c) The Commission investigative attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, 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 a 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: September 17, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–22142 Filed 9–22–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Oil Pollution Act of 1990

Notice is hereby given that on September 12, 2008, a proposed consent decree in *United States of America, the State of Washington, and Suquamish Tribe* v. *Foss Maritime Co.,* Civil Action No. 08–cv–1364, was lodged with the United States District Court for the Western District of Washington.

The Complaint, filed by the Plaintiffs who are Trustees for natural resources, alleges that the defendant, Foss Maritime Company, is liable for natural resource damages pursuant to the Oil Pollution Act of 1990 (''OPA''), 33 U.S.C. 2701 *et seq.*, resulting from the discharge of oil into Puget Sound on December 30, 2003, from a tank barge owned and operated by the defendant at the Point Wells terminal in Shoreline, Washington (hereinafter ''Foss Oil Spill''). In the Consent Decree, the defendant has agreed to pay $382,123 to the Trustees. This amount will reimburse the Trustees for their natural resource damage assessment costs and finance several restoration projects that will be undertaken to restore the natural resources lost and damaged in the Foss Oil Spill.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States, et. al.* v. *Foss Maritime Co.,* Civil Action No. 08–cv–1364, Ref. No. 90–5–1–1–08642.

During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be examined at the Office of the United States Attorney, Western District of Washington, 700 Stewart Street Suite 5220, Seattle, WA 98101–1271, (206) 553–7970. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief Environmental Enforcement Section, Environment and Natural Resources.

[FR Doc. E8–22118 Filed 9–22–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on September 9, 2008, a proposed Settlement Agreement Regarding Miscellaneous Federal and State Environmental Sites was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO LLC, et al.*, Case No. 05–21207 (Bankr. S.D. Tex.) (Docket No. 9101–5, Plan Exhibit 12–B). The settlement provides the United States with an allowed general unsecured claim in the amount indicated for each of the following Sites: The Tacoma Site—Operable Units (''OU'') 02, 04, and 06 of the Commencement Bay Nearshore Tideflats Superfund Site in and around Tacoma and Ruston, Washington, $27,000,000; the Circle Smelting Site—a former zinc smelter facility located in the Village of Beckemeyer, Illinois, $6,052,390; the Terrible Mine Site—a 44-acre former lead mining and milling site located in the Old Isle Mining District of Custer County, Colorado, $1,400,000; Stephenson/Bennett Mine Site—a 150-acre former mining and milling area in Doña Ana County, New Mexico, $550,000; the Coy Mine Site—a zinc mine in Jefferson County, Tennessee, $200,000; the Richardson Flat Tailings Site—a 160-acre former mine tailings impoundment and the Lower Silver Creek area in Summit County, Utah, $7,400,000; the Jack Waite Mine Site—several mine adits, a former mill site, four tailings ponds, and one or more waste rock piles located on land administered by the Forest Service in the Coeur d'Alene National Forest east of Prichard, Idaho, $11,300,000; the Black Pine Mine Site—mill tailings, a large mine waste rock dump, a seep, and associated wastes located on land administered by the Forest Service in the Beaverhead-Deerlodge National Forest northwest of Philipsburg, Montana, $190,000; the Combination Mine Site—a tailings pond and associated wastes in Lower Willow Creek located on land administered by the Forest Service in the Beaverhead-Deerlodge National Forest northwest of Philipsburg, Montana, $542,000; the Flux Mine Site—a former zinc and silver mine and associated mine adits and waste rock dumps located on land administered by the Forest Service in the Coronado National Forest southeast of Patagonia, Arizona, $487,000; the International Boundary Water Commission (''IBWC'') Site—the American Dam and Canal portion of the Rio Grande Canalization Project and the American Dam Field Office in El Paso, Texas, $19,000,000; the Monte Cristo Mining District Site—a historic mining district including mines, mill facilities, adits, and waste piles located partly on land administered by the Forest Service within the Mt. Baker-Snoqualmie National Forest, in Snohomish County, Washington, $5,500,000 (the Settlement also provides the State of Washington an allowed general unsecured claim of $5,500,000 for this Site); the Vasquez Boulevard/I–70 Site—a historic smelter and the residential areas surrounding it, comprising OU1, OU2, and OU3 of the Vasquez Boulevard/Interstate-70 Superfund Site, in north-central Denver, Colorado, $1,500,000. The Settlement Agreement is subject to confirmation of Debtors' Plan of Reorganization.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, comments should refer to *In re Asarco LLC*, Case No. 05–21207 (Bankr. S.D. Tex.), D.J. Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Settlement Agreement may be examined at: The Office of the

United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Chrsti, TX 78476–2001; the Region 4 Office of the United States Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3507; the Region 6 Office of the United States Environmental Protection Agency, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733; the Region 8 Office of the United States Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202–1129; and the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue Suite 900, Seattle, WA 98101. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html*. A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 for the Settlement Agreement (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–22117 Filed 9–22–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on September 10, 2008, a proposed Settlement Agreement (''Agreement'') in *In re Shapes/Arch Holdings LLC et al.,* Case No. 08–14631(GMB) (Bankr. D.N.J.), was lodged with the United States Bankruptcy Court for the District of New Jersey. The Agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and Shapes/Arch Holdings LLC and its subsidiaries, Shapes LLC, Delair LLC, Accu-Weld LLC, and Ultra LLC (collectively the ''Debtors''). The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* (''CERCLA''). The Agreement provides that the Debtors will make a payment to the United States in a total amount of $811,924, representing the following amounts for the following Superfund sites: The Swope Oil Site in Pennshauken, NJ—$375,000, the D'Imperio Superfund Site in Hamilton Township, NJ—$149,506, the Ewan Superfund Site in Shamong Township, NJ—$62,418, and the Lightman Drum Company Site in Winslow Township, NJ—$225,000. The Agreement also covers two additional sites—the Chemical Control Corporation Site in Elizabeth, NJ and the Berks Associates/Douglassville Disposal Site in Douglassville, PA—for no payment amount, as a result of prior settlements for those sites. Finally, the Agreement provides that the Puchack Wellfield Site in Pennshauken, NJ will be treated as a discharged site under Section 1141 of the Bankruptcy Code, 11 U.S.C. 1141.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re Shapes/Arch Holdings LLC et. al.,* Case No. 08–14631(GMB) (Bankr. D.N.J.) and D.J. Ref. No. 90–11–3–09456. A copy of the comments should be sent to Donald G. Frankel, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458 or e-mailed to him at *donald.frankel@usdoj.gov*.

The Agreement may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, 7th Floor, Newark, N.J. 07102 (contact Anthony Labruna at 973–645–2926) or at the offices of EPA Region 2, 290 Broadway, New York, NY 10007–1866 (contact Michael J. van Itallie at 212–637–3151). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or e-mail, forward a check to the Consent Decree library at the address stated above).

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–22134 Filed 9–22–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1489]

Hearing of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel), will hold hearings in Springfield, Massachusetts, on September 24, 2008, and in Washington, DC, on September 30 and October 1, 2008. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of prison rape, and prison and prison systems with the highest and lowest incidence of prison rape. On June 25, 2008, BJS issued the report *Sexual Victimization in Local Jails Reported by Inmates, 2007.* The report provides a listing of local jails ranked according to the prevalence of sexual victimization, and formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: The hearing schedule is as follows:

1. Wednesday, September 24, 2008, 8:30 a.m. to 4:30 p.m. (Hampden County, Massachusetts Correctional Alcohol Center—facility with a low prevalence of sexual victimization);

2. Tuesday, September 30, 2008, 9 a.m. to 5 p.m. (Torrance County, New Mexico Jail—facility with a high prevalence of sexual victimization);

3. Wednesday, October 1, 2008, 9 a.m. to 5 p.m. (Bernalillo County, New Mexico Jail—facility with a high prevalence of sexual victimization).

ADDRESSES: The hearing on September 24, 2008, will take place at the Western New England College, School of Law, 1215 Wilbraham Road, Springfield, Massachusetts 01119–2684. The hearings on September 30, 2008, and October 1, 2008, will take place at the Office of Justice Programs Building, Main Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Christopher Zubowicz, Designated Federal Official, OJP, *christopher.zubowicz@usdoj.gov*, (202) 307–0690.

Note: This is not a toll free number.

SUPPLEMENTARY INFORMATION: This notice corrects the one issued August 19, 2008, regarding upcoming Review Panel hearings. The current notice reflects the postponement of the hearing scheduled on September 25, 2008, in Springfield, Massachusetts, involving the Rose M. Singer Center, New York City Department of Correction. It also correctly states the days of the September 30 and October 1 hearings (Tuesday and Wednesday, respectively) which were incorrectly stated in the August 19, 2008, **Federal Register** Notice.

The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. 15603(b)(3)(A). Testimony from the hearing will assist the Panel in formulating best practices for deterring prison rape. Space is limited at all hearing locations. Members of the public who wish to attend the hearing in Springfield, Massachusetts, should RSVP to Barb Cooley at Western New England College, School of Law, before 3:00 p.m., of the day preceding the hearing. Ms. Cooley can be contacted at 413–782–1624. Members of the public who wish to attend the hearing in Washington, DC, must present photo identification upon entrance to the Office of Justice Programs. Special needs requests should be made to Christopher Zubowicz, Designated Federal Official, OJP, *christopher.zubowicz@usdoj.gov* or 202–307–0690, at least one week prior to the hearing.

Michael Alston,

Office of Justice Programs.

[FR Doc. E8–22254 Filed 9–22–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,410]

Comau, Inc., Warren, Michigan; Notice of Revised Determination on Reconsideration

By application of June 25, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA).

The previous investigation resulted in a negative determination signed on May 23, 2008, was based on the finding that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974. The denial notice was published in the **Federal Register** on June 3, 2008 (73 FR 31716).

In the request for reconsideration, the petitioner stated that even though employment at the subject facility had appeared to be increasing, the subject firm separated a significant amount of workers in the relevant period.

A company official was contacted to verify whether there were separations at the subject facility since May 2007. The company official stated that total employment at Comau, Inc., Warren, Michigan increased from May, 2008 over the corresponding May, 2007. However, the official also clarified that Comau, Inc. transferred several divisions from other Comau facilities to the subject firm during July and August 2007. The official further stated that a significant number of employees have been separated from the subject facility since the transfer and there was a threat of further separations in May 2008.

The investigation revealed that workers of the subject facility are engaged in engineering, project management, and financial functions. The company official stated that workers of the subject facility were in direct support of production at Comau, Inc., Novi, Michigan (TA–W–63,751), Comau Plymouth Engineering, Plymouth, Michigan (TA–W–63,446), Comau, Inc., Macomb Township, Michigan (TA–W–63,430), and Comau, Inc., Southfield, Michigan, (TA–W–61,580) during the relevant period. The above mentioned production facilities were certified eligible for adjustment assistance.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that increases of imports of articles like or directly competitive with articles produced by Comau, Inc. contributed importantly to the total or partial separation of workers at the subject firm and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''Workers of Comau, Inc., Warren, Michigan, who became totally or partially separated from employment on or after May 19, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 15th day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22127 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,197]

Dan River, Inc., Danville Operations, Danville, VA; Amended Notice of Revised Determination on Reconsideration

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 Notice of Revised Determination on Reconsideration on August 27, 2008, applicable to workers of Dan River, Inc., Danville Operations, Danville, Virginia. The notice was published in the **Federal Register** on September 8, 2008 (73 FR 52070–52071).

At the request of the State agency, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are engaged in the production of package labels and packaging material.

The review shows that all workers of Dan River, Inc., Danville, Virginia, were previously certified eligible to apply for adjustment assistance under petition number TA–W–57,724, which expired on September 13, 2007.

Therefore, in order to avoid an overlap in worker group coverage, the Department is amending the April 14, 2007 impact date established for TA–W–63,197 to read September 14, 2007.

The amended notice applicable to TA–W–63,197 is hereby issued as follows:

''All workers of Dan River, Inc., Danville Operations, Danville, Virginia, who became totally or partially separated from employment on or after September 14, 2007 through August 27, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC., this 15th day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22125 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,192]

Shiloh Industries, Liverpool Manufacturing Division, Valley City, OH; Notice of Revised Determination on Reconsideration

On July 25, 2008, the Department issued a negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Shiloh Industries, Liverpool Manufacturing Division, Valley City, Ohio (subject firm). The notice of determination was published in the **Federal Register** on August 12, 2008 (73 FR 46924).

The petition for TAA and ATAA, dated April 14, 2008, was filed on behalf of the subject worker group by a representative of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—United Auto Workers, Region 2–B (Union). The subject worker group produces automotive stampings and weldments (a unit formed by welding together an assembly of pieces). Workers are not separately identifiable by product line.

The negative determination stated that the subject firm did not import automotive stampings and weldments in 2006 through March 2008, and did not shift production to a foreign country during the relevant period. The Department's survey of the subject firm's largest customers revealed that no customer which contributed significantly to the subject firm's sales decline increased its imports during the relevant period. U.S. aggregate imports of motor vehicle metal stampings decreased in January through May 2008 compared with the corresponding 2007 period.

The request for reconsideration alleges that the subject firm out-sourced to a foreign company the production of valve covers (a specific type of automotive stamping) and that the subject firm ''may have lost work'' to another domestic company, and that this domestic competitor ''may be TAA eligible.''

A careful review of previously-submitted information revealed that the Department investigated whether the subject firm had shifted production of automotive stampings or weldments to a foreign country or have scheduled any such shift, and that the subject firm did not and is not scheduled to shift production. The review also revealed that a major declining customer increased their reliance on foreign-produced automotive stampings while decreasing purchases from the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained during the reconsideration investigation, I determine that increases of imports of articles like or directly competitive with automotive stampings produced at the subject firm contributed importantly to the total or partial separation of the subject workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''All workers of Shiloh Industries, Liverpool Manufacturing Division, Valley City, Ohio, who became totally or partially separated from employment on or after April 14, 2007 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 15th day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22124 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,895]

Siny Corp, d/b/a Monterey Mills, Janesville, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 3, 2008, a petitioner requested administrative reconsideration of the Department's negative determination

regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on July 28, 2008 and published in the **Federal Register** on August 12, 2008 (73 FR 46924).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Siny Corporation, d/b/a Monterey Mills, Janesville, Wisconsin engaged in the production of acrylic knit pile fabric, was denied based on the findings that imports of acrylic knit pile fabric did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred.

In the request for reconsideration, the petitioner stated that workers of the subject firm were previously certified eligible for Trade Adjustment Assistance. The petitioner further stated that in order to reveal the import impact, the Department should consider the time period prior to 2006. The petitioner seems to allege that because the subject firm was previously certified eligible for TAA, the workers of the subject firm should be granted another TAA certification.

When assessing eligibility for TAA, the Department exclusively considers import impact during the relevant time period (from one year prior to the date of the petition). Therefore, events occurring before 2006 are outside of the relevant period and are not relevant in this investigation.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of September, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22123 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,278]

Wheeling Pittsburgh Steel Corporation, Including On-Site Leased Workers from Pro Unlimited, Allenport, PA; Amended Notice of Revised Determination on Reconsideration

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 Notice of Revised Determination on Reconsideration on August 11, 2008. The notice was published in the **Federal Register** on August 19, 2008 (73 FR 48395).

At the request of the State agency, the Department reviewed the Notice of Revised Determination on Reconsideration for workers of the subject firm. The workers are engaged in the production of cold rolled sheet coils.

New information shows that leased workers from Pro Unlimited were employed on-site at the Allenport, Pennsylvania location of Wheeling Pittsburgh Steel Corporation. The Department has determined that these workers were sufficiently under the control of Wheeling Pittsburgh Steel Corporation to be considered leased workers.

Based on these findings, the Department is amending this revised determination to include workers leased from Pro Unlimited working on-site at the Allenport, Pennsylvania location of the subject firm.

The intent of the Department's certification is to include all adversely affected secondary workers employed at Wheeling Pittsburgh Steel Corporation, Allenport, Pennsylvania.

The amended notice applicable to TA–W–63,278 is hereby issued as follows:

''All workers of Wheeling Pittsburgh Steel Corporation, including on-site leased workers from Pro Unlimited, Allenport, Pennsylvania, who became totally or partially separated from employment on or after April 21, 2007, through August 11, 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 12th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22126 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,575 etc.]

Philips Consumer Lifestyle; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Philips Consumer Lifestyle, Ledgewood, New Jersey, Including Employees of Philips Consumer Lifestyle, Ledgewood, New Jersey Working at Various Locations in the Following States:

TA–W–63,575A, Arkansas;
TA–W–63,575B, California;
TA–W–63,575C, Florida;
TA–W–63,575D, Minnesota;
TA–W–63,575E, North Carolina;
TA–W–63,575F, South Carolina;
TA–W–63,575G, Texas;
TA–W–63,575H, Virginia.

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 16, 2008, applicable to workers of Philips Consumer Lifestyle, Ledgewood, New Jersey. The notice was published in the **Federal Register** on July 30, 2008 (73 FR 44284).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of antennas and packaged electronic accessories.

New information shows that worker separations have occurred involving employees of the Ledgewood, New Jersey facility of Philips Consumer Lifestyle working at various locations in

the following states: Arkansas, California, Florida, Minnesota, North Carolina, South Carolina, Texas and Virginia. These employees provided sales support services for the firm's production of antennas and packaged electronic accessories.

Based on these findings, the Department is amending this certification to include employees of the Ledgewood, New Jersey facility of the subject firm working at various locations in the above mentioned states.

The intent of the Department's certification is to include all workers of Philips Consumer Lifestyle who were adversely affected by a shift in production of antennas and packaged electronic accessories to China.

The amended notice applicable to TA–W–63,575 is hereby issued as follows:

''All workers of Philips Consumer Lifestyle, Ledgewood, New Jersey (TA–W–63,575), including employees of Philips Consumer Lifestyle, Ledgewood, New Jersey working at various locations in the following states: Arkansas (TA–W–63,575A), California (TA–W–63,575B), Florida (TA–W–63,575C), Minnesota (TA–W–63,575D), North Carolina (TA–W–63,575E), South Carolina (TA–W–63,575F), Texas (TA–W–63,575G) and Virginia (TA–W–63,575H), who became totally or partially separated from employment on or after June 18, 2007, through July 16, 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 12th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22119 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,810]

B.G. Sulzle, Inc., Currently Known as Angiotech America, Inc., Including On-Site Leased Workers From Contemporary Personnel Services (CPS) and Staffworks, North Syracuse, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on August 7, 2007, applicable to workers of B.G. Sulzle, Inc., including on-site leased workers from Contemporary Personnel Services and Staffworks, North Syracuse, New York. The notice was published in the **Federal Register** on August 27, 2007 (72 FR 49024).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of stainless steel surgical needles.

New information shows that on March 22, 2006, Angiotech America, Inc. purchased B.G. Sulzle, Inc. and is currently known as Angiotech America, Inc. Workers wages at the subject firm are being reported under a separate Unemployment Insurance (UI) tax account for Angiotech America, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–61,810 is hereby issued as follows:

''All workers of B.G. Sulzle, Inc., currently known as Angiotech America, Inc., including on-site leased workers from Contemporary Personnel Services (CPS) and Staffworks, North Syracuse, New York, who became totally or partially separated from employment on or after July 9, 2006, through August 7, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 12th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22121 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,962C]

Hanesbrands, Inc., Tamaqua Division, Including On-Site Leased Workers From Kelly Services and Job Connections, Tamaqua, PA; 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 September 13, 2007, applicable to workers of Hanesbrands, Inc., Tamaqua Division, Tamaqua, Pennsylvania. The notice was published in the **Federal Register** on September 27, 2007 (72 FR 54939).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in a variety of support activities related to the firm's production of laminated fabric and fabric components.

New information shows that workers leased from Kelly Services and Job Connections were employed on-site at the Tamaqua Division, Tamaqua, Pennsylvania location of Henesbrands, 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 from Kelly Services and Job Connections working on-site at the Tamaqua Division, Tamaqua, Pennsylvania location of the subject firm.

The intent of the Department's certification is to include all workers employed at Hanesbrands, Inc., Tamaqua Division who were adversely affected by a shift in production of laminated fabric and fabric components to El Salvador, the Dominican Republic and Honduras.

The amended notice applicable to TA–W–61,962C is hereby issued as follows:

''All workers of Hanesbrands, Inc., Tamaqua Division, including on-site leased workers from Kelly Services and Job Connections, Tamaqua, Pennsylvania, who

became totally or partially separated from employment on or after August 7, 2006, through September 13, 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 12th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22122 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,528]

Sherwood, Harsco GasServ, a Subsidiary of Harsco Corporation, Currently Known as Sherwood Valve LLC, Niagara Falls, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on December 15, 2006, applicable to workers of Sherwood, Harsco GasServ, a subsidiary of Harsco Corporation, Niagara Falls, New York. The notice was published in the **Federal Register** on December 27, 2006 (71 FR 77801).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of precision valves used for gas and fluid control.

New information shows that on December 7, 2007, Taylor-Wharton International purchased Sherwood, Harsco GasServ and is currently known as Sherwood Valve LLC. The workers' wages at the subject firm are being reported under a separate Unemployment Insurance (UI) tax account for Sherwood Valve LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The amended notice applicable to TA–W–60,528 is hereby issued as follows:

''All workers of Sherwood, Harsco GasServ, a subsidiary of Harsco Corporation, currently known as Sherwood Valve LLC, Niagara Falls, New York, who became totally or partially separated from employment on or after December 4, 2005, through December 15, 2008, 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 12th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–22120 Filed 9–22–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, September 25, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Rule—Part 742 of NCUA's Rules and Regulations, Regulatory Flexibility Program.
2. Final Rule—Part 740 of NCUA's Rules and Regulations, The Official Advertising Statement.
3. Final Rule—Part 792 of NCUA Rules and Regulations, Freedom of Information Act and Privacy Act.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, September 25, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to Exemptions (8), and (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. E8–22349 Filed 9–19–08; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL ENDOWMENT FOR THE ARTS

Submission for OMB Review; Comment Request

September 12, 2008.

The National Endowment for the Arts has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Leadership Initiatives and Projects Coordinator, Michael McLaughlin (202/682–5457).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 (202/395–4718), within thirty days of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: National Endowment for the Arts.

Title: Operation Homecoming Workshop Evaluation Surveys.

OMB Number:

Frequency: One time only.

Affected Public: Participants in writing workshops associated with ''Operation Homecoming: Writing the Wartime Experience''.

Number of Respondents: Estimate 350.

Estimated Time per Respondent: 15 minutes.

Estimate Cost per Respondent: $64.

Total Burden Hours: 87.5.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $22,500.

Description: ''Operation Homecoming: Writing the Wartime Experience'' presents writing workshops for U.S. Armed Forces active duty troops and veterans of both current and past conflicts. Workshops generally will last four to six weeks, and will take place at approximately 25 sites around the country, including military installations, veterans' centers and hospitals. The NEA has entered into a cooperative agreement with the Southern Arts Federation in Atlanta, GA, to administer the writing workshops and oversee the evaluation process. Evaluation surveys will be completed by workshop participants.

Kathleen Edwards,

Director, Administrative Services.

[FR Doc. E8–22153 Filed 9–22–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 28, 2008 to September 10, 2008. The last biweekly notice was published on September 9, 2008 (73 FR 52412).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's

property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include

personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: July 7, 2008

Description of amendments request: The proposed change would revise Surveillance Requirement (SR) 3.6.1.6.1 to add a new requirement to verify that each vacuum breaker is closed within 6 hours following an operation that causes any of the vacuum breakers to open and revises SR 3.6.1.6.2 by removing the requirement to perform functional testing of each vacuum breaker within 12 hours following an operation that causes any of the vacuum breakers to open.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve physical changes to any plant structure, system, or component. The suppression chamber-to-drywell vacuum breakers only provide an accident mitigation function. As such, the probability of occurrence for a previously analyzed accident is not impacted by the change to the surveillance frequency for these components.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. No physical change to suppression chamber-to-drywell vacuum breakers is being made as a result of the proposed change, nor does the change alter the manner in which the vacuum breakers operate during an accident. As a result, no new failure modes of the suppression chamber-to-drywell vacuum breakers are being introduced. The surveillance requirements for the suppression chamber-to-drywell vacuum breakers will continue to ensure testing of the suppression chamber-to-drywell vacuum breakers following plant transients involving the discharge of steam to the suppression chamber from the SRVs, and such testing will continue to provide assurance that the vacuum breakers are able to perform their design function. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the surveillance requirements for the suppression chamber-to-drywell vacuum breakers does not involve any physical alteration of plant systems, structures, or components. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. Therefore, the proposed change to the surveillance requirements for the suppression chamber-to-drywell vacuum breakers does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Response: No.

The proposed change revises Surveillance Requirement 3.6.1.6.1 to add a new requirement to verify each vacuum breaker is closed within 6 hours following an operation that causes any of the vacuum breakers to open and revises Surveillance Requirement 3.6.1.6.2 by removing the requirement to perform functional testing of each vacuum breaker within 12 hours following an operation that causes any of the vacuum breakers to open. The operability and functional characteristics of the suppression chamber-to-drywell vacuum breakers remains unchanged. The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change to the surveillance requirements for the suppression chamber-to-drywell vacuum breakers does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed change to Surveillance Requirements 3.6.1.6.1 and 3.6.1.6.2 will avoid unnecessary cycling and wear of the vacuum breaker test actuation mechanisms, will improve the reliability of the vacuum breakers, and will minimize the potential for a plant shut down due to a problem with a vacuum breaker test actuating mechanism from excessive wear. The proposed change does not impact any safety analysis assumptions or results. Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Dominion Nuclear Connecticut, Inc. Docket Nos. 50–245, 50–336, and 50–423, Millstone Power Station, Units 1, 2, and 3, New London County, Connecticut

Date of amendment request: August 21, 2008.

Description of amendment request: The proposed amendment removes references to and limits imposed by Nuclear Regulatory Commission Generic Letter (GL) 82–12, ''Nuclear Power Plant Staff Working Hours,'' from the subject plants'' technical specifications (TS). The guidelines have been superseded by the requirements of Title 10 of the *Code of Federal Regulations*, Part 26 (10 CFR 26), Subpart I, ''Managing Fatigue.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The removal of references to GL 82–12 will not remove the requirement to control work hours and manage fatigue. Removal of TS references to GL 82–12 will be performed concurrently with the implementation of the more conservative 10 CFR 26, Subpart I, requirements.

The proposed changes do not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not impact the initiators or assumptions of analyzed events, nor do they impact the mitigation of accidents or transient events.

Because these new requirements are administrative in nature and further, are more conservative with respect to work hour controls and fatigue management, the proposed change will not significantly increase the probability or consequence of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes remove references to GL 82–12 from TS consistent with the recently revised Subpart I to 10 CFR 26. These regulations are more restrictive than the current guidance and would add conservatism to work hour controls and fatigue management. Work hours will continue to be controlled in accordance with NRC requirements. The new rule continues to allow for deviations from controls to mitigate or prevent a condition adverse to safety or necessary to maintain the security of the facility. This ensures that the new rule will not restrict work hours at the expense of the health and safety of the public as well as plant personnel.

The proposed changes do not alter plant configuration, require that new plant equipment be installed, alter assumptions made about accidents previously evaluated, add any initiators, or impact the function of plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected.

Because the proposed changes do not remove the station's requirement to control work hours and increases the conservatism of work hour controls by changing administrative scheduling requirements, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Compliance with the new rule adds conservatism to existing fatigue management and contributes to the margin of safety. Deletion of references to GL 82–12 in the TS is administrative in nature since fatigue management is controlled through the new rule. MPS1, MPS2 and MPS3 will continue their fitness-for-duty and behavioral observation programs, both of which will be strengthened by compliance with the new rule. The proposed changes add conservatism to fatigue management and contribute to the margin of safety.

The proposed changes do not involve any physical changes to plant SSCs or the manner in which SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions of operation, or design parameters for any SSC.

The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting an accident analysis.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Harold K. Chernoff.

Duke Energy Carolinas, LLC, Docket No. 50–269, Oconee Nuclear Station, Unit1, Oconee County, South Carolina

Date of amendment request: June 26, 2008.

Description of amendment request: The proposed amendment would result in a revision of the current licensing basis (LB) in regard to high-energy line break (HELB) events occurring outside of containment for Oconee Nuclear Station, Unit 1 (ONS–1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Justification: The ONS–1 changes proposed in this LAR [license amendment request] include revisions to the current HELB methodology and mitigation strategy as documented in a new HELB report. This report provides the completed analysis for ONS HELBs including the descriptions of the station modifications that have been or will be made as a result of this comprehensive HELB reanalysis.

The modifications associated with the revised HELB LB will be designed and installed in accordance with applicable quality standards such that the likelihood of failure of new or modified SSCs will not initiate failures, malfunctions, or inadvertent operations of existing accident mitigating SSCs [structures, systems, and components], such as the KHUs [Keowee hydro units], SSF [standby shutdown facility], HPI [high-pressure injection], or the Central Tie Switchyard 100 kV alternate power systems. For Turbine Building HELBs that could adversely affect equipment needed to stabilize and cooldown the units, the addition of the PSW [protected service water] System provides added assurances that safe shutdown can be readily established and maintained beyond the 72-hour SSF mission time.

In conclusion, the changes will collectively enhance the station's overall design, safety, and risk margin; therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Justification: The proposed modifications address potential adverse consequences from a HELB outside of containment. These modifications will be designed and installed in compliance with applicable quality standards such that there are reasonable assurances that they will neither introduce nor cause new failure mechanisms, malfunctions or accident initiators not already considered in the current HELB design and licensing basis.

The overall effect of the changes to the HELB LB is considered an enhancement to the station's ability to achieve safe and cold shut down following a damaging HELB; therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Justification: The revised HELB LB will collectively enhance the station's overall design, safety, risk margin, and the station's ability to mitigate a HELB event; therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Duke concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significance hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Melanie C. Wong.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 26, 2008.

Description of amendment request: The proposed amendments would result

in a revision to portions of the Updated Final Safety Analysis Report (UFSAR) regarding the tornado licensing basis (LB).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(4) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Justification: Although a tornado does not constitute a previously-evaluated UFSAR Chapter 15 design basis accident or transient as described in 10 CFR 50.36(c)(2), it is a design basis criterion that is required to be considered in plant equipment design. The possibility of a tornado striking the ONS is appropriately considered in the UFSAR and Duke has concluded that the proposed changes do not increase the possibility that a damaging tornado will strike the site or increase the consequences from a damaging tornado.

The modifications associated with the revised tornado LB will be designed and installed such that failures in these new or modified SSCs [structures, systems, and components will not initiate failures or inadvertent operations of existing ONS accident mitigating SSCs, such as the KHUs [Keowee hydro units], SSF [standby shutdown facility], or HPI [high-pressure injection] systems. The use of the NRC-approved TORMIS methodology confirmed that the risk from missile damage was acceptably low to vulnerable areas of the SSF structures and other SSCs required for SSD [safe shutdown]. As a result, there is reasonable assurance that a tornado missile will not prohibit the SSF system from fulfilling its tornado LB or other functions.

Also, there are additional electrical power sources available which provide increased assurance that systems used to transition the units to SSD can be readily powered following a damaging tornado. The PSW [protected service water] System will provide additional assurance that SSD can be established and maintained.

Overall, the changes proposed will increase assurance that potential challenges to the integrity of the RCS due to the effects of a damaging tornado will not result in a radioactive release to the environment. In conclusion, the changes will collectively enhance the station's overall design, safety, and risk margin; therefore, the probability or consequences of accidents previously evaluated are not significantly increased.

(5) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Justification: Although only the SSF is credited for establishing and maintaining SSDHR [secondary side decay heat removal] and RCMU [reactor coolant makeup] during the first 72 hours following a damaging tornado, there are two relatively independent, diverse and redundant systems capable of safely shutting down all three units in the revised LB (SSF and PSW). Other modifications improve the ability of the SSF and PSW systems to perform their functions following a damaging tornado. The modifications will be designed and installed such that they will not introduce new failure mechanisms, malfunctions or accident initiators not already considered in the design and LB.

In conclusion, the changes to the tornado LB will not degrade existing plant systems and will significantly enhance the station's ability to achieve SSD following a damaging tornado. The design and installation of the PSW system will be such that there is reasonable assurance that the system, including new power paths, will not contribute to the possibility of new or different kind of accident from any accident previously evaluated.

(6) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Justification: The revised tornado LB will collectively enhance the station's overall design, safety, and risk margin; therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Melanie C. Wong.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 26, 2008, as supplemented by letters dated August 4 and August 26, 2008.

Description of amendment request: The proposed amendments would make changes to the Technical Specifications that are conforming or related to a change in fuel type from Westinghouse 0.400-inch OD Vantage+ fuel to Westinghouse 0.422-inch OD Vantage+ fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The requested amendment is related to a change in the reload fuel design. The design criteria for the reload fuel are consistent with those for the existing fuel and ensure that the reload fuel is compatible on the basis of coolant flow and neutronic characteristics, as well as DNB and peak cladding temperature requirements. The reload fuel design also ensures mechanical compatibility with the existing fuel, reactor core, control rods, steam supply system, and fuel handling tools and system.

The reactor fuel and its analysis are not accident initiators. Therefore, the change in reload fuel design does not affect accident or transient initiation.

The minimum boron accumulator concentration is also not an accident initiator. The proposed change to the minimum accumulator boron concentration Technical Specification limit ensures that the plant will continue to operate in a manner that provides acceptable levels of protection for health and safety of the public. Further, all design basis accidents and transients affected by the fuel upgrade were re-analyzed or evaluated using representative core designs and the results for each fuel type show all acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of the 422V+ fuel is consistent with current plant design bases and does not adversely affect any fission product barrier, nor does it alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. The operational characteristics of 422V+ fuel are bounded by the safety analyses * * *. The 422V+ fuel design performs within existing fuel design limits.

The proposed change to the minimum accumulator boron concentration Technical Specification limit ensures that the plant will continue to operate in a manner that provides acceptable levels of protection for health and safety of the public. Further, all design basis accidents and transients affected by the fuel upgrade were re-analyzed or evaluated using representative core designs and the results for each fuel type show all acceptance criteria will continue to be met.

No equipment additions or modifications are included with the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which applicable design basis limits are determined, nor do they result in exceeding existing design basis limits. Thus, all licensed safety margins are maintained.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, San Diego County, California

Date of amendment request: June 27, 2008.

Description of amendment request: These proposed changes consist of Proposed Change Number 583 (PCN–583) and are in support of the replacement of the steam generators (SGs) at SONGS Units 2 and 3. The proposed changes reflect revised SG inspection and repair requirements, and revised peak containment post-accident pressure resulting from installation of the replacement SGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes will reflect installation of Replacement Steam Generators (RSGs) at San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. The proposed changes involve revising the Steam Generator (SG) tube inspection and repair [requirements] and revising the peak containment post-accident pressure.

The proposed change to revise the SG tube inspection and repair [requirements] affect Technical Specifications (TSs) 3.4.17, ''Steam Generator (SG) Tube Integrity,'' 5.5.2.11, ''Steam Generator (SG) Program,'' and 5.7.2.c, ''Special Reports.'' The proposed TS 3.4.17, 5.5.2.11, and 5.7.2.c revisions remove the repair method (sleeving), and Alternate Repair Criteria (ARC). The revisions replace the 44% tube repair criterion applicable to the original SGs, with a 35% (preliminary) tube repair criterion applicable to the RSGs. The revisions replace inspection requirements applicable to the tubing material of the original SGs with inspection requirements applicable to the tubing material of the RSGs, thus maintaining consistency with applicable material-specific regulatory guidance (TSTF–449, Revision 4). Overall, these revisions will ensure that all RSG tubes found by inservice inspection to contain flaws with a depth equal to or exceeding 35% (preliminary) of the nominal tube wall thickness will be plugged as required by revised TS 5.5.2.11.c.1.

The TS 5.5.2.11.b SG structural integrity, accident induced leakage, and operational leakage performance criteria are unchanged and will continue to be met for the RSGs. Meeting the SG performance criteria provides reasonable assurance that the SG tubing will remain capable of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident.

The proposed change to the SG tube inspection and repair [requirements] will not affect the probability of any accident initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident. There will be no change to accident mitigation performance. The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Updated Final Safety Analysis Report (UFSAR).

The proposed change to the peak containment post-accident pressure will revise TS 5.5.2.15, ''Containment Leakage Rate Testing Program,'' by changing the stated values for peak containment internal pressure for the design-basis Loss-of-Coolant Accident (LOCA) and Main Steam Line Break (MSLB) accidents. The current LOCA value of 45.9 psig would be changed to 48.0 psig and the current MSLB value of 56.5 psig would be changed to 51.5 psig.

The proposed change does not affect the probability of occurrence of an accident previously evaluated because it relates solely to the consequences of hypothesized accidents given that the accident has already occurred.

The proposed change increases the calculated peak containment internal pressure for the LOCA events from 45.9 psig to 48.0 psig. The revised post-LOCA peak containment pressure is bounded by the existing and revised post-MSLB peak containment pressure and the containment design pressure of 60 psig. Despite the increase in the post-LOCA peak containment pressure, any post-accident containment leakage will still be limited to less than 0.1% containment air volume per day, consistent with current TS 5.5.2.15. Therefore, there is no increase in the radiological consequences of a LOCA as a result of the change to the post-LOCA peak containment pressure.

The post-MSLB peak containment pressure decreases from 56.5 psig to 51.5 psig. Thus, the peak containment post-accident pressure is decreased as a result of this change, and there is no resulting increase in the consequences of a previously evaluated accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

[Response: No.]

The proposed change to the SG tube inspection and repair [requirements] deletes the repair method (sleeving) and the ARC applicable to the original SGs, and provides repair criteria and inspection requirements applicable to the RSGs. This will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The primary-to-secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions. The proposed change does not adversely affect the method of operation of the SGs or the primary or secondary coolant chemistry controls and does not impact other plant systems or components.

The proposed change to the peak containment post-accident pressure relates to two accidents, LOCA and MSLB, which are already evaluated in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

For the proposed change to the SG inspection and repair [requirements], the safety function of the SGs is maintained by ensuring the integrity of the tubes. SG tube integrity is a function of the design, environment, and the physical condition of the SG tubes. The proposed change, which deletes the repair method (sleeving) and the ARC applicable to the original SGs, and provides repair criteria and inspection requirements applicable to the RSGs, does not adversely affect the SG tube design or operating environment. SG tube integrity will continue to be maintained by implementing the TS 5.5.2.11 SG Program to manage SG tube inspection, assessment, and plugging. The requirements established by the TS 5.5.2.11 SG Program are consistent with those in the applicable design codes and standards.

For the change to the peak containment post-accident pressure, the proposed change increases the calculated peak containment internal pressure for the LOCA events from 45.9 psig to 48.0 psig. The revised post-LOCA peak containment pressure is bounded by the existing and revised post-MSLB peak containment pressure. The post-MSLB peak containment pressure decreases from 56.5 psig to 51.5 psig. The proposed peak containment internal pressure for the MSLB accident is less than the containment design pressure of 60 psig and less than the previously calculated pressure.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, SCE concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly,

a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), San Diego County, California

Date of amendment request: June 27, 2008.

Description of amendment request: SONGS Units 2 and 3 requests adoption of an approved change to the standard technical specifications (STS) for Combustion Engineering Pressurized Water Reactor (PWR) Plants (NUREG–1432) and plant-specific technical specifications (TS), to allow replacing the departure from nucleate boiling (DNB) parameter limits with references to the core operating limits report (COLR) in accordance with Generic Letter 88–16, ''Removal of Cycle Specific Parameter Limits from Technical Specifications,'' dated October 4, 1988. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–487, Revision 1, using the consolidated line-item improvement process (CLIIP).

The NRC staff issued a notice of availability in the **Federal Register** on June 5, 2007 (72 FR 31108), including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the CLIIP process. The licensee affirmed the applicability of the model NSHC determination in its application dated June 27, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed amendment replaces the limit values of the reactor coolant system (RCS) DNB parameters (i.e., pressurizer pressure, RCS cold leg temperature, and RCS flow rate) in TS with references to the COLR, in accordance with the guidance of Generic Letter 88–16, to allow these parameter limit values to be recalculated without a license amendment. The proposed amendment does not involve operation of any required structures, systems, or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. The cycle-specific values in the COLR must be calculated using the NRC-approved methodologies listed in TS 5.6.3, ''Core Operating Limits Report (COLR).'' Replacing the RCS DNB parameter limits in TS with references to the COLR will maintain existing operating fuel cycle analysis requirements. Because these parameter limits are determined using the NRC approved methodologies, the acceptance criteria established for the safety analyses of various transients and accidents will continue to be met. Therefore, neither the probability nor consequences of any accident previously evaluated will be increased by the proposed change.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident preciously evaluated.

Criterion 2: Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated?

Response: No.

The proposed amendment to replace the RCS DNB parameter limits in TS with references to the COLR does not involve a physical alteration of the plant, nor a change or addition of a system function. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the proposed change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the Proposed Change Involve a Significant Reduction in the Margin of Safety?

Response: No.

The proposed amendment to replace the RCS DNB parameter limits in TS with references to the COLR will continue to maintain the margin of safety. The DNB parameter limits specified in the COLR will be determined based on the safety analyses of transients and accidents, performed using the NRC-approved methodologies that show that, with appropriate measurement uncertainties of these parameters accounted for, the acceptance criteria for each of the analyzed transients are met. This provides the same margin of safety as the limit values currently specified in the TS. Any future revisions to the safety analyses that require prior NRC approval are identified per the 10 CFR 50.59 review process.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: October 26, 2007.

Brief description of amendments: The proposed amendment would revise the Technical Specification requirements related to control room envelope habitability in accordance with the NRC-approved Revision 3 of Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF–448, ''Control Room Habitability.''

*Date of publication of individual notice in the **Federal Register**:* August 29, 2008 (73 FR 51014).

Expiration date of individual notice: September 29, 2008 (Public Comments) and October 28, 2008 (Requests for Hearing).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these

amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 27, 2007.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) TS 3.7.2, ''Main Steam Isolation Valves,'' and TS 3.7.3, ''Main Feedwater Isolation Valves, Main Feedwater Control Valves, Associated Bypass Valves and Tempering Valves,'' by removing the specific isolation time for the isolation valves from the associated surveillance requirements.

Date of issuance: September 8, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 244 and 238.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register**:* February 26, 2008 (73 FR 10 10297).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: March 13, 2008.

Brief description of amendment: The amendment replaces the current Arkansas Nuclear One, Unit No. 2 (ANO–2) TS 3.4.8, ''RCS [reactor coolant system] Specific Activity,'' limit on RCS gross specific activity with a new limit on RCS noble gas specific activity. The noble gas specific activity limit would be based on a new dose equivalent Xe–133 (DEX) definition that would replace the current E Bar average disintegration energy definition. In addition, the current dose equivalent I–131 (DEI) definition would be revised to allow the use of additional thyroid dose conversion factors (DCFs). This request adopted Technical Specification Task Force (TSTF) change traveler TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS [reactor coolant system] Specific Activity Technical Specification'' (Agencywide Documents Access and Management System Accession No. ML052630462), for pressurized water reactor Standard Technical Specifications (STS) for ANO–2.

Date of issuance: September 8, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 2–282.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications and license.

*Date of initial notice in **Federal Register**:* May 6, 2008 (73 FR 25039).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 8, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 22, 2007, as supplemented by letters dated April 22, and July 8, 2008.

Brief description of amendment: The amendment revises Technical Specifications (TS) Limiting Condition for Operation (LCO) 3.0.4 and Surveillance Requirement (SR) 4.0.4 to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.'' This operating license improvement was made available by the U.S. Nuclear Regulatory Commission (NRC) on April 4, 2003, as part of the consolidated line item improvement process. The proposed TS changes also include an additional application of LCO 3.0.4.c for TS 3.4.3, ''Pressurizer Spray Valves.''

Date of issuance: August 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: Unit 2–281.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications and License.

*Date of initial notice in **Federal Register**:* December 18, 2007 (72 FR 71710). The supplements dated April 22, and July 8, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket No. 50–352 and No. 50–353, Limerick Generating Station, Unit 1 and 2, Montgomery County, Pennsylvania

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendments: August 8, 2007.

Brief description of amendments: The amendment replaces references to Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code with references to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) in the applicable technical specification (TS) section for the Inservice Testing Program (IST) for the Exelon Generation Company, LLC, and AmerGen Energy Company, LLC, plants that have implemented industry Improved Technical Specifications. The changes are based on Technical Specification Task Force (TSTF) 479, Revision 0, ''Changes to Reflect Revision of 10 CFR 50.55a.'' For all units except Oyster Creek and TMI–1, the amendments also incorporate TSTF–497, Revision 0, ''Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less,'' which adds a provision in the applicable TS section to only apply the extension allowance of SR 3.0.2 to the frequency table listed in the TS as part of the IST program and to normal and accelerated inservice testing frequencies of two years or less, as applicable.

Date of issuance: August 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 153, 153, 157, 157, 229, 222, 194, 155, 268, 268, 272, 241, 236 and 266.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, DPR–19, DPR–25, NPF–39, NPF–85, DPR–16, DPR–44, DPR–56, DPR–29, DPR–30, and DPR–50: The amendments revised the Technical Specifications/Licenses.

Date of initial notice in ***Federal Register****:* December 4, 2007 (72 FR 68213). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: August 24, 2007, supplemented by letter dated June 11, 2008.

Brief description of amendment: The amendments consist of changes to the technical specifications of each unit, increasing the minimum required volume of fuel oil in the emergency diesel generator day tanks from 200 gallons to 250 gallons.

Date of issuance: August 27, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 193 and 154.

Facility Operating License Nos. NPF–39 and NPF–85. These amendments revised the license and the technical specifications.

Date of initial notice in ***Federal Register****:* June 20, 2008 (73 FR 35168). The NRC staff's original proposed no significant hazards determination was based on the supplement dated June 11, 2008. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 27, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: July 13, 2007, as supplemented on February 28, 2008, March 28, 2008, April 17, 2008, May 23, 2008, July 29, 2008, August 7, 2008, and August 21, 2008.

Brief description of amendments: The amendments modify the Technical Specifications to support application of Alternative Source Term (AST) methodology at PBAPS Units 2 and 3. The fission product release from the reactor core into containment is referred to as the ''source term,'' and is characterized by the composition and magnitude of the radioactive material, the chemical and physical properties of the material, and the timing of the release from the reactor core as discussed in Technical Information Document (TID) 14844, ''Calculation of Distance Factors for Power and Test Reactor Sites.'' Since the publication of TID 14844, advances have been made in understanding the composition and magnitude, chemical form, and timing of fission product releases from severe nuclear power plant accidents. In light of these insights, NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' was published in 1995 with revised ASTs for use in the licensing of future light-water reactors.

The Nuclear Regulatory Commission (NRC), in Title 10 of the Code of Federal Regulations, Section 50.67 (10 CFR 50.67), ''Accident source term,'' subsequently allowed the use of the ASTs described in NUREG–1465 at operating plants. This request to apply the AST methodology is made in accordance with 10 CFR 50.67, with the exception that TID 14844 will continue to be used as the radiation dose basis for equipment qualification at PBAPS Units 2 and 3. Application of the AST methodology at PBAPS Units 2 and 3 requires that radiation dose limits specified in 10 CFR 50.67 are adhered to for the exclusion area boundary, the low population zone outer boundary, and the facility control room.

Date of issuance: September 5, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 269 and 273.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register****:* May 6, 2008 (73 FR 25040). The supplements dated February 28, 2008, March 28, 2008, April 17, 2008, May 23, 2008, July 29, 2008, August 7, 2008, and August 21, 2008, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed

no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 5, 2008.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: February 20, 2008.

Brief description of amendment: This amendment revised an Applicability footnote in Technical Specification (TS) Table 3.3.2.1–1, ''Control Rod Block Instrumentation,'' to permit use of an improved optional Banked Position Withdrawal Sequence (BPWS) reactor shutdown process. Corresponding changes are in accordance with the Bases of TS 3.1.6, ''Control Rod Pattern,'' and the Bases of TS 3.3.2.1, to reference the new BPWS shutdown method. This amendment is consistent with Technical Specification Task Force (TSTF) Traveler TSTF–476–A, Revision 1, ''Improved BPWS Control Rod Insertion Process (NEDO–33091),'' and the Consolidated Line Item Improvement Process Notice of Availability dated May 23, 2007.

Date of issuance: August 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 150.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register****:* April 22, 2008 (73 FR 21659).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 2008.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York

Date of application for amendment: September 27, 2007, as supplemented by letter dated June 5, 2008.

Brief description of amendment: The amendment changes the NMP1 Technical Specifications (TSs) by revising the operability requirements contained in TS Section 3.2.7, ''Reactor Coolant System Isolation Valves,'' and associated requirements contained in TS Section 3.6.2, ''Protective Instrumentation.'' The amendment will modify the conditions for which reactor coolant system isolation valves (RCSIVs) and associated isolation instrumentation must be operable to include the hot shutdown reactor operating condition. In addition, it will be required that the RCSIVs in the shutdown cooling (SDC) system and associated isolation instrumentation be operable during the cold shutdown reactor operating condition and the refueling reactor operating condition. Lastly, TS Section 3.6.2 (Table 3.6.2b) will be revised to delete unnecessary operability requirements for the cleanup system and SDC system high area temperature isolation instrumentation, consistent with the proposed revisions to the RCSIV operability requirements.

Date of issuance: August 27, 2008.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 197.

Renewed Facility Operating License No. DPR–63: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register****:* November 20, 2007 (72 FR 65367). The supplement dated June 5, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 5, 2007, as supplemented April 7, 2008.

Brief description of amendment request: TS Section 5.5.17, ''Containment Leakage Rate Testing Program,'' is changed to resolve a timing conflict between the FNP, Unit 2 R20 refueling outage schedule and the 15-year test date for the FNP, Unit 2 Type A Containment Integrated Leak Rate Test (ILRT). Although Unit 1 does not have a current timing conflict, a similar Unit 1 change was requested for consistency. The change adds approximately 1 month to the previously approved required date.

Date of issuance: September 2, 2008.

Effective Date: As of its date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–177; Unit 2–170.

Facility Operating License Nos. NPF–2 and NPF–8: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register****:* January 29, 2008 (73 FR 5229).

The supplement dated April 7, 2008, provided clarifying information that did not change the scope of the application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: August 29, 2006, as supplemented November 6, November 27, 2006, January 30, June 22, July 16, August 13, October 18, December 11, 2007, January 24, February 4, February 25 (two letters, nos. 1389 and 0175), February 27, March 13, April 1, May 5, June 25, July 2, July 14, and August 14, 2008.

Brief description of amendments: The amendments revise the licensing basis with a full scope implementation of an alternative source term (AST) for HNP.

Date of issuance: August 28, 2008.

Effective date: As of the date of issuance and shall be implemented by May 31, 2012 for Hatch Unit 1 and by May 31, 2011, for Hatch Unit 2.

Amendment Nos.: Unit 1–256, Unit 2–200.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register****:* July 23, 2008 (73 FR 42834).

The supplement dated August 14, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 28, 2008.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases

for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/ requestor will need to download the Workplace Forms Viewer ™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer ™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: August 26, 2008, as supplemented on August 28, 2008.

Description of amendment request: The amendments revise Functional Unit 6.f of Table 3.3–3, ''Engineered Safety Feature Actuation System Instrumentation,'' modifying the mode of applicability with two footnotes. The first footnote indicates that the auxiliary feedwater (AFW) auto-start function associated with the trip of main feedwater (MFW) pumps in Mode 2 is only required when one or more MFW pumps are supplying feedwater to the steam generators. The second footnote, which annotates the minimum channels operable column for Functional Unit 6.f of TS Table 3.3–3, indicates that one channel may be inoperable during Mode 1 for up to 4 hours when starting up or shutting down a MFW pump. Functional Unit 6.f of technical specification Table 3.3–3 is an anticipatory trip function that provides early actuation of the AFW system.

Date of issuance: August 29, 2008.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos: 319 and 312.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 29, 2008.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Thomas H. Boyce.

Dated at Rockville, Maryland, this 11th day of September 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–21925 Filed 9–22–08; 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 22, 29, October 6, 13, 20, 27, 2008.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Week of September 22, 2008

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.

Week of October 13, 2008—Tentative

There are no meetings scheduled for the week of October 13, 2008.

Week of October 20, 2008—Tentative

Wednesday, October 22, 2008

9:30 a.m. Briefing on New Reactor Issues—Construction Readiness, Part 1 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

1:30 p.m. Briefing on New Reactor Issues—Construction Readiness, Part 2 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 27, 2008—Tentative

There are no meetings scheduled for the week of October 27, 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 *rohn.brown@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 *darlene.wright@nrc.gov.*

Dated: September 18, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–22345 Filed 9–19–08; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy Washington, DC 20549–0213.

Reports of Evidence of Material Violations: SEC File No. 270–514, OMB Control No. 3235–0572.

Notice is hereby given that pursuant to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. Sections 3501–3520, the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension.

On February 6, 2003, the Commission published final rules, effective August 5, 2003, entitled ''Standards of Professional Conduct for Attorneys Appearing and Practicing Before the Commission in the Representation of an

Issuer'' (17 CFR 205.1–205.7). The information collection embedded in the rules is necessary to implement the Standards of Professional Conduct for Attorneys prescribed by the rule and required by Section 307 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7245). The rules impose an ''up-the-ladder'' reporting requirement when attorneys appearing and practicing before the Commission become aware of evidence of a material violation by the issuer or any officer, director, employee, or agent of the issuer. An issuer may choose to establish a qualified legal compliance committee (''QLCC'') as an alternative procedure for reporting evidence of a material violation. In the rare cases in which a majority of a QLCC has concluded that an issuer did not act appropriately, the information may be communicated to the Commission. The collection of information is, therefore, an important component of the Commission's program to discourage violations of the federal securities laws and promote ethical behavior of attorneys appearing and practicing before the Commission.

The respondents to this collection of information are attorneys who appear and practice before the Commission and, in certain cases, the issuer, and/or officers, directors and committees of the issuer. We believe that, in providing quality representation to issuers, attorneys report evidence of violations to others within the issuer, including the Chief Legal Officer, the Chief Executive Officer, and, where necessary, the directors. In addition, officers and directors investigate evidence of violations and report within the issuer the results of the investigation and the remedial steps they have taken or sanctions they have imposed. Except as discussed below, we therefore believe that the reporting requirements imposed by the rule are ''usual and customary'' activities that do not add to the burden that would be imposed by the collection of information.

Certain aspects of the collection of information, however, may impose a burden. For an issuer to establish a QLCC, the QLCC must adopt written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation. We estimate for purposes of the PRA that there are approximately 16,611 issuers that are subject to the rules.[1] Of these, we estimate that approximately five percent, or 831, have established or will establish a QLCC.[2] Establishing the written procedures required by the rule should not impose a significant burden. We assume that an issuer would incur a greater burden in the year that it first establishes the procedures than in subsequent years, in which the burden would be incurred in updating, reviewing, or modifying the procedures. For purposes of the PRA, we assume that an issuer would spend 6 hours every three-year period on the procedures. This would result in an average burden of 2 hours per year. Thus, we estimate for purposes of the PRA that the total annual burden imposed by the collection of information would be 1,662 hours. Assuming half of the burden hours will be incurred by outside counsel at a rate of $400 per hour would result in a cost of $332,400.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the 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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/ Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

September 15, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22115 Filed 9–22–08; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based, in part, on the total number of operating companies that filed annual reports on Form 10–K, Form 10–KSB, Form 20–F, or Form 40–F, during the 2008 fiscal year and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (12,939). In addition, we estimate that approximately 3,672 investment companies currently file periodic reports on Form N–SAR.

[2] Indications are that the 2005 estimate of the percentage of issuers that would establish QLCCs (10%) was high. Our adjusted estimate in the percentage of QLCCs (5%) results in a reduced burden estimate as compared to the previously-approved collection.

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 34–58572/ September 17, 2008]

Emergency Order Pursuant to Section 12(K)(2) of the Securities Exchange Act of 1934 Taking Temporary Action To Respond to Market Developments

The Commission continues to be concerned that there is a substantial threat of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of an emergency order under Section 12(k) of the Securities Exchange Act of 1934 (the ''July Emergency Order''),[1] we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by ''naked'' short selling. Our concerns, however, are no longer limited to just the financial institutions that were the subject of the July Emergency Order. In addition, we have become concerned that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist a substantial threat of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the

[1] *See* Exchange Act Release No. 58166 (July 15, 2008).

Commission is exercising its powers under Section 12(k)(2) of the Securities Exchange Act of 1934.[2] Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to impose enhanced delivery requirements on sales of all equity securities, by adding and making immediately effective a temporary rule to Regulation SHO, Rule 204T. The temporary rule imposes a penalty on any participant [3] of a registered clearing agency,[4] and any broker-dealer from which it receives trades for clearance and settlement, for having a fail to deliver position at a registered clearing agency in any equity security. In addition, we have concluded it is necessary to make immediately effective amendments to Rule 203(b)(3) of Regulation SHO that eliminate the options market maker exception from Regulation SHO's close-out requirement. We are also making immediately effective Rule 10b–21, a ''naked'' short selling antifraud rule.[5] We intend these enhanced delivery requirements and the antifraud rule to impose powerful disincentives to those who might otherwise exacerbate artificial price movements through ''naked'' short selling.

In addition, in these unusual and extraordinary circumstances, we believe such requirements are in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption in the securities markets.

This emergency requirement should significantly reduce any possibility that ''naked'' short selling may contribute to the disruption of markets in these securities. We described in the releases in which we proposed and adopted Regulation SHO the bases for the current delivery requirements Regulation SHO imposes. We believe, however, that the unusual circumstances we now confront require the enhanced requirements we are imposing today.

It is ordered that, pursuant to our Section 12(k)(2) powers, we are adding § 242.204T to read as follows:

§ 242.204T Short Sales.

(a) A participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity; *Provided, however:*

(1) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing securities of like kind and quantity; or

(2) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security sold pursuant to § 230.144 of this chapter for thirty-five consecutive settlement days after the settlement date for a sale in that equity security, the participant shall, by no later than the beginning of regular trading hours on the thirty-sixth consecutive settlement day following the settlement date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity;

(b) If a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out such fail to deliver position in accordance with the requirements of paragraph (a) of this section, the participant and any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii), may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, to the extent that the broker or dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency;

(c) The participant must notify any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii):

(1) That the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of paragraph (a) of this section; and

(2) When the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency; and

(d) *Definitions:* (1) For purposes of this section, the term *settlement date* shall mean the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security.

(2) For purposes of this section, the term *regular trading hours* has the same meaning as in Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(b)(64).

It is further ordered that, pursuant to our Section 12(k)(2) powers, § 242.203(b)(3)(iii) of Regulation SHO is amended by revising paragraphs (b)(3)(iii) and (b)(3)(v) to read as follows:

(iii) *Provided, however*, that a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment and which, prior to the effective date of this amendment, had been previously excepted from the close-out requirement in paragraph (b)(3) of this section (*i.e.*, because the participant of a registered clearing agency had a fail to deliver position in

[2] This finding of an ''emergency'' is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

[3] The term ''participant'' has the same meaning as in section 3(a)(24) of the Exchange Act. *See* 15 U.S.C. 78c(a)(24).

[4] The term ''registered clearing agency'' means a clearing agency, as defined in section 3(a)(23)(A) of the Exchange Act, that is registered as such pursuant to section 17A of the Exchange Act. *See* 15 U.S.C. 78c(a)(23)(A) and 78q–1, respectively.

[5] Rule 204T, as set forth in this Order, applies only to fails to deliver resulting from trades that occur after this Order becomes effective. Rule 203(b)(3) of Regulation SHO, as amended by this Order, continues to apply to fails to deliver that occurred prior to the Order becoming effective. For example, if a participant has a fail to deliver position in a threshold security that has persisted for six consecutive settlement days prior to the effective date of this Order and the fail continues to persist until the thirteenth settlement day, the participant must still close out its position pursuant to Rule 203(b)(3).

the threshold security that is attributed to short sales effected by a registered options market maker to establish or maintain a hedge on options positions that were created before the security became a threshold security), shall immediately close out that fail to deliver position, including any adjustments to the fail to deliver position, within 35 consecutive settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

* * * * *

(v) If a participant of a registered clearing agency entitled to rely on the 35 consecutive settlement day close-out requirement contained in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section has a fail to deliver position at a registered clearing agency in the threshold security for 35 consecutive settlement days from the effective date of the amendment, the participant and any broker or dealer for which it clears transactions, including any market maker, that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

It is further ordered that, pursuant to our Section 12(k)(2) powers, we are adding § 240.10b–21 to read as follows:

§ 240.10b–21 Deception in connection with a seller's ability or intent to deliver securities on the date delivery is due.

PRELIMINARY NOTE to rule 10b–21: This rule is not intended to limit, or restrict, the applicability of the general antifraud provisions of the federal securities laws, such as section 10(b) of the Act and rule 10b–5 thereunder.

It shall also constitute a ''manipulative or deceptive device or contrivance'' as used in section 10(b) of this Act for any person to submit an order to sell an equity security if such person deceives a broker or dealer, a participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on or before the settlement date, and such person fails to deliver the security on or before the settlement date. For purposes of this section, settlement date is as defined in § 242.204T of this chapter.

This Order shall be effective at 12:01 a.m. EDT on September 18, 2008, and shall terminate at 11:59 p.m. on October 1, 2008 unless further extended by the Commission.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22166 Filed 9–22–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [to be published].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, September 18, 2008 at 1 p.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Closed Meeting scheduled for Thursday, September 18, 2008 has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: September 18, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–22195 Filed 9–22–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Quality Resorts of America, Inc., Quentra Networks, Inc., and Quokka Sports, Inc.; Order of Suspension of Trading

September 19, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quality Resorts of America, Inc. because it has not filed any periodic reports since the period ended June 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quentra Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quokka Sports, Inc. because it has not filed any periodic reports since the period ended December 31, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 19, 2008, through 11:59 p.m. EDT on October 2, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–22373 Filed 9–19–08; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Ragen Corp. Rainwire Partners, Inc., Rako Capital Corp., Ramtek Corp. (n/k/a Ramtek I Corp.), Ranger Industries, Inc., RCS Holdings, Inc., and Recycling Industries, Inc., Respondents.; Order of Suspension of Trading

September 19, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ragen Corp. because it has not filed any periodic reports since the period ended June 30, 1993.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rainwire Partners, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rako Capital Corp. because it has not filed any periodic reports since the period ended March 31, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ramtek Corp. (n/k/a Ramtek I Corp.) because it has not filed any periodic reports since April 2, 1993.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ranger Industries, Inc. because it has not filed

any periodic reports since September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of RCS Holdings, Inc. because it has not filed any periodic reports since January 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Recycling Industries, Inc. because it has not filed any periodic reports since December 31, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 19, 2008, through 11:59 p.m. EDT on October 2, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E8–22380 Filed 9–19–08; 4:15 pm]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In August 2008, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2009. See 72 FR 46341 (August 8, 2008). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2009. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2009. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2009.

As so prefaced, the Commission has identified the following priorities:

(1) Continuation of its work on federal sentencing policy with the congressional, executive, and judicial branches of the government, and other interested parties, in light of *United States* v. *Booker* and subsequent Supreme Court decisions, possibly including (A) An evaluation of the impact of those decisions on the federal sentencing guideline system, (B) development of amendments to the federal sentencing guidelines, (C) development of recommendations for legislation regarding federal sentencing policy, and (D) a study of statutory mandatory minimum penalties;

(2) Consideration of alternatives to incarceration, including preparation and dissemination of information and materials from the ''Symposium on Crime and Punishment in the United States: Alternatives to Incarceration,'' hosted by the Commission on July 14–15, 2008, in Washington, DC;

(3) Implementation of crime legislation enacted during the 110th or 111th Congress warranting a Commission response, including (A) the Court Security Improvement Act of 2007, Public Law 110–177; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(4) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled *Cocaine and Federal Sentencing Policy*, and to develop appropriate guideline amendments in response to any related legislation;

(5) A multi-year study of the definition of ''crime of violence'' used in both statutes and guidelines;

(6) Continuation of its efforts, in light of recent Supreme Court jurisprudence and pursuant to the Commission's ongoing authority and responsibility under 28 U.S.C. 995(a)(17), (18), and (21), to receive feedback and provide expanded training on the federal sentencing guidelines, including possibly holding regional public hearings;

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(8) Consideration of miscellaneous guideline application issues regarding (A) Offenses involving counterfeit bearer obligations of the United States, (B) application of § 3C1.3 (Commission of Offense While on Release), and (C) other miscellaneous issues coming to the Commission's attention from case law and other sources.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E8–22213 Filed 9–22–08; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11435]

Alabama Disaster Number AL–00015.

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1789–DR), dated 09/10/2008.

Incident: Hurricane Gustav.

Incident Period: 08/29/2008 through 09/03/2008.

Effective Date: 09/15/2008.

Physical Loan Application Deadline Date: 11/10/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alabama, dated 09/10/2008, is hereby amended to establish the incident period for this disaster as beginning 08/29/2008 and continuing through 09/03/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22178 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11435]

Alabama Disaster #AL–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1789–DR), dated 09/10/2008.

Incident: Hurricane Gustav.

Incident Period: 08/29/2008 and continuing.

Effective Date: 09/10/2008.

Physical Loan Application Deadline Date: 11/10/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/10/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baldwin, Mobile.

Contiguous Counties (Economic Injury Loans Only):

Alabama: Clarke, Escambia, Monroe, Washington.

Florida: Escambia.

Mississippi: George, Greene, Jackson.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage and for economic injury is 11435.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22179 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 through 09/12/2008.

Effective Date: 09/12/2008.

Physical Loan Application Deadline Date: 10/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to establish the incident period for this disaster as beginning 08/18/2008 and continuing through 09/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22175 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11411]

Florida Disaster Number FL–00036

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–1785–DR), dated 08/24/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 through 09/12/2008.

Effective Date: 09/11/2008.

Physical Loan Application Deadline Date: 10/23/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 08/24/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Sarasota, Manatee.

Contiguous Counties (Economic Injury Loans Only):

Florida: Hillsborough.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22176 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster Number FL–00035.

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 through 09/12/2008.

Effective Date: 09/11/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 08/26/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Baker, Collier, Glades, Jefferson, Lake, Marion, Nassau, Orange, Polk.

Contiguous Counties: (Economic Injury Loans Only):

Florida: Alachua, Bradford, Citrus, Columbia, Desoto, Hardee, Hillsborough, Levy, Madison, Manatee, Miami-Dade, Monroe, Pasco, Sumter, Taylor, Union.

Georgia: Brooks, Camden, Charlton, Clinch, Ware.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22182 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11409 and #11410]

Florida Disaster Number FL–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1785–DR), dated 08/26/2008.

Incident: Tropical Storm Fay.

Incident Period: 08/18/2008 and continuing through 09/12/2008.

Effective Date: 09/12/2008.

Physical Loan Application Deadline Date: 10/27/2008.

EIDL Loan Application Deadline Date: 05/26/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated 08/26/2008 is hereby amended to establish the incident period for this disaster as beginning 08/18/2008 and continuing through 09/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22183 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11425]

Louisiana Disaster Number LA–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–1786–DR), dated 09/02/2008.

Incident: Hurricane Gustav.

Incident Period: 09/01/2008 through 09/11/2008.

Effective Date: 09/11/2008.

Physical Loan Application Deadline Date: 11/03/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Louisiana, dated 09/02/2008, is hereby amended to establish the incident period for this disaster as beginning 09/01/2008 and continuing through 09/11/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22180 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11436]

Vermont Disaster #VT–00010.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–1790–DR), dated 09/12/2008.

Incident: Severe Storms and Flooding.

Incident Period: 07/21/2008 through 08/12/2008.

Effective Date: 09/12/2008.

Physical Loan Application Deadline Date: 11/12/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 06/12/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/12/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Addison, Caledonia, Essex, Lamoille, Orange, Washington, Windsor.

Contiguous Counties (Economic Injury Loans Only):

Vermont: Bennington, Chittenden, Franklin, Orleans, Rutland, Windham.

New Hampshire: Coos, Grafton, Sullivan.

New York: Essex, Washington.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage and for economic injury is 11436.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–22177 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Suspension of Applicants for Small Disadvantaged Business Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The Small Business Administration (SBA) is suspending the receipt of applications for the Government-wide small disadvantaged business (SDB) program effective September 22, 2008. SBA will continue to process all applications received before that date to completion, unless an applicant withdraws its application.

DATES: *Effective Date:* September 22, 2008.

Applicability Date: This suspension applies until lifted by SBA through notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Leo Sanchez, Acting Director, Office of Certification and Eligibility, at (202) 619–1658, or *Leo.Sanchez@sba.gov*.

SUPPLEMENTARY INFORMATION: Since 1996, the SBA has performed this function on behalf of all Federal procuring agencies and has received reimbursement from these other agencies through Economy Act Agreements. On December 9, 2004, Congress allowed the price evaluation adjustment authority for SDBs to expire for the majority of agencies. As a consequence, other agencies have become less inclined to enter into Economy Act Agreements to pay for the SBA SDB certification process. As SBA reassesses the SDB certification program, SBA believes that it is necessary to suspend the receipt of further applications for SDB certification. During this suspension, SBA will continue to process all applications received prior to the effective date of the suspension to completion. This means that any application that is initially denied on reconsideration may be appealed to SBA's Office of Hearings and Appeals pursuant to SBA's regulations. In addition, SBA will continue to process protests of SDB eligibility in connection with specific Government contracts or subcontracts during the suspension. Any firm not wishing to complete the application process may withdraw its SDB application at any time.

Dated: September 16, 2008.

Calvin Jenkins,

Acting Associate Administrator for Government Contracting and Business Development.

[FR Doc. E8–22388 Filed 9–22–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 19, 2008, vol. 73, no. 119, page 34974. The FAA has amended its hazardous materials training requirements, requiring that certain repair stations provide documentation showing that persons handling hazmat for transportation have been trained following DOT guidelines.

DATES: Please submit comments by October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Hazardous Materials Training Requirements.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0705.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 2,772 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.27 hours per response.

Estimated Annual Burden Hours: An estimated 6,900 hours annually.

Abstract: The FAA has amended its hazardous materials training requirements, requiring that certain repair stations provide documentation showing that persons handling hazmat for transportation have been trained following DOT guidelines.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 15, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–22064 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at the Greenwood-Leflore Airport, Greenwood, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Greenwood-Leflore Airport to change the use of an area on the airport to non-aeronautical use.

DATES: Comments must be received on or before October 23, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bardin Redditt, Airport Manager at the following address: 502–A Airport Road, Greenwood, MS 38930.

FOR FURTHER INFORMATION CONTACT: Jeff Orr, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, (601) 664–9885. The request to change use may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The Greenwood-Leflore Airport in Greenwood, Mississippi, is considering a proposal for the expansion of the lease area of a commercial tenant presently located on the airport. The lease area of this tenant will increase from 12.82 acres to 28.71 acres. The business operation of this aeronautical tenant necessarily includes a non-aeronautical component. Of this 28.71 acres proposed for lease, 7.50 acres of paved apron and adjacent unpaved areas will be changed to non-aeronautical use. The Airport has already partially offset the loss of this pavement by the recent construction of a new general aviation (GA) apron. This proposal will require the displacement of one aeronautical user. The Airport has provided an offer to this aeronautical user for the purchase of his facilities. Additional ramp area and space for hangar construction is available on the new GA apron. The increased revenue generated by the proposed lease expansion will be used for operations and maintenance and capital improvements on the Airport.

Any person may inspect the request in person at the FAA office listed above under ''**FOR FURTHER INFORMATION CONTACT**.'' In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the offices of the Greenwood-Leflore Airport, Greenwood, Mississippi.

Issued in Jackson, Mississippi, on September 11, 2008.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. E8–22060 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Thirteenth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held October 14–16, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact: RTCA Secretariat, Telephone: 202–833–9339, e-mail: *rruana@rtca.org.*

Note: Dress is Business Casual.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington DC 20036, telephone (202) 833–9339, fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

October 14

- Opening Plenary Session
- Introductory Remarks and Introductions
- Approval of Twelfth Plenary Summary
- Plenary Presentations:
- SEIT Organization and Revised Work Plan
- Disposition of Master Schedule vl.1 Comments
- Tactical Work Plan for Requirements Product Team
- Tactical Work Plans for C&C and S&A Product Teams
- Overview of Product Team Breakout Sessions
- Plenary Adjourns

October 15

- Product Team Breakout Sessions
- Requirements Product Team
- C&C Product Team
- S&A Product Team

October 16

- Product Team Breakout Sessions
- Requirements Product Team
- C&C Product Team
- S&A Product Team
- Plenary Reconvenes
- Closing Plenary Session
- Other Business
- Date, Place, and Time for Plenary 14
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 15, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E8–22062 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–43]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or

omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 14, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0874 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425) 227–1556, Transport Airplane Directorate, ANM–113, Federal Aviation Administration, 1601 Lind Avenue, SE, Renton, WA 98055–4056; or Fran Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 17, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0874.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 26.47.

Description of Relief Sought: The petitioner is requesting relief from a design approval holder requirement to develop data for specific airplanes that have been permanently removed from service and, therefore, will not be operated in commercial service in the United States.

[FR Doc. E8–22168 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–42]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: In accordance with 14 CFR 11.47(c), the FAA has received petitions from the Association of Flight Attendants–CWA, AFL–CIO (AFA–CWA) and the Air Line Pilots Association, International (ALPA). Those petitions requested an extension of the comment period for a petition from The Boeing Company. That exemption, if granted, would provide Boeing relief from certain pressurized cabin requirements in regard to uncontained engine failure for Boeing Model 747–8/8F series airplanes. The FAA finds that AFA–CWA and ALPA have substantive interest in the exemption request and show that good cause exists to extend the comment period because it is in the public's interest.

DATE: The comment period for the Summary of Petition Received published on August 22, 2008 (73 FR 49734), closed September 11, 2008, and is reopened until October 8, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0826 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425) 227–1556, Transport Airplane Directorate, ANM–113, Federal Aviation Administration, 1601 Lind Avenue, SE., Renton, WA 98055–4056; or Fran Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 18, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–22169 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Indianapolis Executive Airport, Zionsville, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The 21.508 acres of land, known as Parcel A on the airports Exhibit A Property Map, is situated southeast of the airport. The land was obligated under FAA Project No(s). 3–18–0103–06. There are no impacts to the airport by allowing the airport to dispose of the property. The land was previously acquired for approach protection under a larger parcel of land purchased from Ms. Lela Covert (listed as Parcel 3 in the current Exhibit A Property Map and Parcel 7 under previous Exhibit A Property Maps). These 21.508 acres of the larger parcel are not needed for approach protection or future airport development. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the Federal Register on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 23, 2008.

ADDRESSES: Jack Delaney, Assistant ADO Manager, Chicago Airports District Office, 2300 E. Devon, Chicago, IL 60018.

FOR FURTHER INFORMATION CONTACT: Jack Delaney, Assistant ADO Manager, Chicago Airports District Office, 2300 E. Devon, Chicago, IL 60018. Telephone Number 847–294–7875/FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at Indianapolis Executive Airport, Indianapolis, Indiana.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Zionsville, Boon County, Indiana, and described as follows:

A part of the Northeast Quarter of Section 12, Township 18 North, Range 2 East, Boone County, Indiana, described as follows: Commencing at the rebar with a plastic cap marked ''Mid-States Engr'' marking the northwest corner of said quarter section; thence South 00 degrees 56 minutes 54 seconds West along the west line of said quarter section 1,201.59 feet; thence South 89 degrees 52 minutes 48 seconds East 768.09 feet to the POINT OF BEGINNING OF THIS DESCRIPTION: thence North 89 degrees 54 minutes 51 seconds East 1,031.67 feet; thence South 00 degrees 56 minutes 54 seconds West 910.49 feet; thence South 89 degrees 54 minutes 51 seconds West 1,026.64 feet; thence North 00 degrees 37 minutes 55 seconds East 910.41 feet to the POINT OF BEGINNING and containing 21.508 acres, more or less. The bearing in this description are based upon the north line of the Northeast Quarter of section 12 have a bearing of South 89 degrees 52 minutes 48 seconds East.

Issued in Des Plaines, Illinois, on September 9, 2008.

Jim Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–22063 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2008–0053]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final report.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This final report presents the findings from the first FHWA audit of the California Department of Transportation (Caltrans) under the pilot program.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202) 366–2034, *Ruth.Rentch@dot.gov*, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Background

Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. The FHWA solicited comments on the first audit report in a **Federal Register** Notice published on June 2, 2008, at 73 FR 31536. The FHWA received one comment which was supportive of the draft audit report. This notice provides the final draft of the first FHWA audit report for Caltrans under the pilot program.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327.

Issued on: September 16, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

Surface Transportation Project Delivery Pilot Program—FHWA Audit of Caltrans, January 29–31, 2008

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) section 6005(a) established the Surface Transportation Project Delivery Pilot Program (Pilot Program), codified at Title 23, United States Code (U.S.C.), section 327. The Section 6005 Pilot Program allows the Secretary to assign, and the State to assume, the Secretary of Transportation's (Secretary) responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of the Federal Highway Administration (FHWA).

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audits is to assess a pilot State's compliance with the Memorandum of Understanding (MOU) [1] and applicable Federal laws and policies, to collect information needed to evaluate the success of the Pilot Program, to evaluate pilot State progress toward achieving its performance measures, and to collect information needed for the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report. This audit report was published in the **Federal Register** June 2, 2008, at 73 FR 31536 with a request for comments (Docket Number FHWA–2008–0053). The 60-day comment period closed August 1, 2008, with one comment received. In compliance with 23 U.S.C. 327(g)B, FHWA has responded to the comment and published the final report in the **Federal Register** no later than 60 days after the date on which the period for public comment closed.

The California Department of Transportation (Caltrans) published its Application for Assumption (Application) under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its application to FHWA on May 21, 2007, and FHWA, after soliciting the views of other Federal agencies, reviewed and approved the application. Then on June 29, 2007, Caltrans and FHWA entered into an MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program will be effective through August 2011.

In order to meet the audit requirements specified in SAFETEA–LU, FHWA contracted with consultants who have expertise in compliance auditing to assist FHWA in developing the audit processes and procedures for the Pilot Program. Training was provided to the audit team, FHWA, and Caltrans staff in two phases:

1. Basics of Compliance Auditing (January 2007); and

2. Development of the Pilot Program Audit Process and Procedures (August 2007).

The August 2007 audit training included specific Pilot Program auditing processes and procedures. The auditors received training on each core audit area to be evaluated during FHWA audits of each pilot State's Program. The core audit areas to be evaluated are: Program management; records and documentation management; quality control and quality assurance processes; legal sufficiency; performance measures; and training.

Scope of the Audit

The Caltrans' Pilot Program audit was conducted by the FHWA audit team in California from January 29 through January 31, 2008. The audit, as required in SAFETEA–LU, assessed Caltrans' compliance with the roles and responsibilities it assumed in the MOU and also provided recommendations to assist Caltrans in creating a successful Pilot Program.

As this was the first FHWA audit of Caltrans' participation in the Pilot Program, it was designed to begin the audit sampling process. The audit sample included fundamental processes and procedures the State put in place to carry out the assumptions of the roles and responsibilities set forth in the MOU. Key sample areas included Pilot Program staffing resources, training, legal sufficiency, and the implementation of processes and procedures to support assumed responsibilities. The sampling process also included a geographic element, as the audit included onsite visits to two Caltrans locations, the Caltrans Headquarters office in Sacramento, and its District 4 Office in Oakland. Future audits will include onsite visits to other Caltrans Districts.

While the six core audit areas identified and discussed during the August 2007 training serve as the basis for each Pilot Program audit, it is not expected that each audit will address all six core audit areas. For the first audit, FHWA selected core audit areas for review based on professional auditing experience, statistical techniques (where appropriate), interviews with Federal resource agencies, and an evaluation of background information provided by Caltrans prior to the onsite audit. All Pilot Program areas for which compliance is required under the MOU will be evaluated cumulatively by FHWA in future audits. Future FHWA Pilot Program audits will also follow up on findings from previous FHWA Pilot Program audits.

Audit Process and Implementation

Each FHWA audit conducted under the Pilot Program is designed to ensure a pilot State's compliance with the commitments in its MOU with FHWA. FHWA will not evaluate specific project-related decisions made by the State as these decisions are the sole responsibility of the pilot State. However, the scope of the FHWA audits does include reviewing the processes and procedures used by the pilot State to reach project decisions in compliance with MOU Section 3.2.

Also, Caltrans committed in its Application (which is incorporated into the MOU in section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA Pilot Program audits will review how Caltrans is meeting each of these commitments as well as the

[1] Caltrans MOU available at *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

performance of the Pilot Program in the core audit areas previously described.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program
- Expanded Quality Control Procedures
- Independent Environmental Decisionmaking
- Determining the NEPA Class of Action
- Consultation and Coordination with Resource Agencies
- Issue Identification and Conflict Resolution Procedures
- Record Keeping and Retention
- Expanded Internal Monitoring and Process Reviews
- Performance Measures To Assess the Pilot Program
- Training To Implement the Pilot Program
- Legal Sufficiency Review

The FHWA audit team included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review
- FHWA Office of Chief Counsel
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- Volpe National Transportation Systems Center
- Advisory Council on Historic Preservation

From January 29 through January 31, 2008, the audit team conducted the onsite audit and evaluated the core Pilot Program areas associated with program management, training, records and documentation management, and legal sufficiency at both Caltrans Headquarters and District level. The onsite audit consisted of interviews with more than 40 Caltrans staff at Headquarters and in the Districts for both the Capital and Local Assistance programs, as well as 11 members of Caltrans' legal staff at Headquarters and in field offices. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, associate planners, and technical experts. Caltrans staff at several Districts were contacted by telephone and a portion of the audit team visited the District 4 Office in Oakland. The team also reviewed project documentation associated with the projects provided to the FHWA California Division Office.

FHWA acknowledges that Caltrans identified specific issues during its first self-assessment performed under the Pilot Program as required under MOU section 8.2.6. During the FHWA onsite audit, Caltrans indicated that it had begun to implement corrective actions to address some issues identified in its first self-assessment. Some issues identified in the Caltrans self-assessment may overlap with FHWA findings in this audit report. In part, FHWA conducts each Pilot Program audit to evaluate assumed responsibilities and to obtain evidence to support the basis for each audit finding. Therefore, this audit report documents findings within the scope of the audit and as of the dates of the onsite portion of the audit. FHWA does acknowledge that some deficiencies identified in this audit report occurred during the first 3 months of Pilot Program operations.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review this draft report. FHWA has reviewed the comments received from Caltrans and has revised sections of the draft report where appropriate.

Overall Audit Opinion

As this is a Pilot Program, it is expected that a learning curve is required. As such, Caltrans has made reasonable progress in implementing the start-up phase of Pilot Program operations and Caltrans is learning how to operate this new Pilot Program effectively. Based on the information reviewed, it is the audit team's opinion that to date, Caltrans has been carrying out the responsibilities it has assumed in keeping with the intent of the MOU. The Pilot Program in California is proceeding through the start-up phase. During the onsite audit, Caltrans staff and management indicated ongoing interest in obtaining constructive feedback on successes and areas for improvement. By addressing the findings in this report, Caltrans will help move the program toward success.

Findings

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria (i.e., MOU, Application for Assumption). The time period covered in this first audit report is from the start of the Pilot Program (July 1, 2007) through completion of the first onsite audit (January 31, 2008). This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application for Assumption and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application for Assumption and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application for Assumption and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit; or*

Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application for Assumption and/or MOU. *Corrective action is required prior to the next audit.*

Summary Findings

Findings—Compliant

(C1) *Legal Sufficiency*—Caltrans' Legal Division has developed a consistent process to conduct formal legal sufficiency reviews by attorneys (per 23 Code of Federal Regulations §§ 771.125(b) and 771.135 (k) [2]) and has provided basic legal sufficiency training to each reviewing attorney, in compliance with MOU section 8.2.5 and Section 773.106(b)(3)(iii) of Caltrans' Application. (Note: An evaluation of the implementation of the legal sufficiency review process could not be performed because no legal sufficiency determinations had been completed under the Pilot Program as of the date of the FHWA audit.)

(C2) *Establish Pilot Program Policies and Procedures*—Caltrans currently, in general, complies with MOU section 1.1.2 commitments to establish Pilot Program policy and procedural documentation (as detailed in Caltrans' Application).

Pilot Program policies and procedures are described in the Caltrans' Application sections ''Overview of Caltrans'' Standard Environmental Reference (SER),'' ''Other Guidance,'' and ''Appendix C.'' Caltrans maintains the SER, a four volume Environmental handbook, as a single on-line policy and procedural reference focusing on statutory and regulatory requirements for environmental documents, supporting technical studies, and the

[2] Effective April 11, 2008, FHWA's Section 4(f) regulation has been re-codified as 23 CFR part 774. The legal sufficiency review requirement for Final Section 4(f) Evaluations is now found at 23 CFR 774.7(d).

procedures for processing these reports. The SER addresses compliance with NEPA, the California Environmental Quality Act (CEQA), and other applicable Federal and State laws, executive orders, regulations, guidance documents, and policies. Caltrans added Chapter 38: ''NEPA Delegation,'' to Volume 1 of the SER to include the majority of the policies and procedures associated with administering the Pilot Program. However, other sections in the SER including ''Policy Memos'' contain information on the Pilot Program. In addition to the SER, a number of manuals and other forms of guidance on Caltrans Web sites include information on various aspects of processes associated with the Pilot Program. Most notably, Chapter 6 of the Local Assistance Program Manual for Local Assistance Projects Off the State Highway System provides detailed guidance on preparing environmental documents for local agency projects and also refers users to the SER.

(C3) *Background NEPA Training*—Caltrans' existing Environmental Staff Development Program, outlined in the Application, has processes in place to ensure that Environmental Staff involved in NEPA documentation have the underlying foundational skill sets required in addition to the added skills required to address responsibilities under the Pilot Program. To achieve this, the Environmental Staff Development Program includes numerous processes, including an annual needs assessment, to evaluate the training needs of the environmental staff at each of Caltrans' 12 districts. These processes help to ensure ongoing compliance with the overall Caltrans' Application commitment to ongoing staff development. (Note: Specific skills required for the Pilot Program are discussed under separate findings.)

(C4) *Training Plan*—Caltrans conducted a training needs assessment specific to the Pilot Program and developed a training plan titled ''Caltrans Surface Transportation Project Delivery Pilot Program Training Plan (Oct. 1, 2007)'' in compliance with section 12.1.2 of the MOU.

(C5) *Interagency Agreements that Involve Signatories in Addition to FHWA and Caltrans*—Caltrans complied with MOU section 5.1.5 as it pertains to the National Historic Preservation Act, Section 106 Programmatic Agreement (PA). Caltrans completed addenda to the PA within 6 months after the effective date of the MOU to reflect Caltrans' assignment of authority under the Pilot Program.

(C6) *State Commitment of Resources*—The initial evaluation of resources to implement the Pilot Program and the assignment of resources, as of the date of the first audit, is compliant with MOU section 4.2.2, as demonstrated by:

a. Creation of eight new Caltrans positions (Person Years or PY, equivalent to the Federal Full Time Equivalent or FTE) to support Pilot Program implementation. These new positions include two in the Caltrans Headquarters Division of Environmental Analysis (one NEPA Delegation Manager, one Statewide Audit Coordinator) and six new positions in the Caltrans Division of Local Assistance, Office of NEPA Delegation and Environmental Procedures (one Local Assistance NEPA Delegation and Environmental Coordinator and five Local Assistance NEPA Delegation Coordinators).

b. Assigning additional responsibilities to existing Caltrans Headquarters staff in the areas of Legal Sufficiency, Training, and Local Assistance, as well as expanding the responsibilities of four Environmental Coordinators. To date, these responsibilities have been accommodated within the work schedules of these positions.

c. Continuing and expanding the use of technical specialists (e.g., Biologists, Cultural Resource specialists) and generalists (e.g., Senior Environmental Planners) from Caltrans' Capital Projects section to assist, as needed, Caltrans' Local Assistance section with the review and approval of NEPA program elements. The reallocation of resources is conducted on an ongoing basis to meet needs (under the Pilot Program and in general) as they are identified.

d. Maintaining organizational and staffing capabilities to effectively carry out the responsibilities assumed under MOU sections 4.2.2 and 4.2.3 pertaining to section 106 of the National Historic Preservation Act.

Findings—Needs Improvement

(N1) *Quality Assurance/Quality Control (QA/QC) Process Implementation*—The Caltrans QA/QC process developed to comply with MOU section 8.2.5 has not been consistently implemented for all projects assumed under the Pilot Program. Caltrans personnel did not demonstrate a consistent understanding of the steps in the QA/QC process. As staff use and apply the QA/QC procedures, Caltrans needs to actively monitor conformance with its procedures and, as needed, assess and correct the root causes behind areas of weakness in execution.

(N2) *QA/QC Process Related to SER Chapter 38 Procedural and Policy Changes*—MOU section 8.2.5 requires that Caltrans carry out regular QA/QC activities to ensure that the assumed responsibilities are conducted in accordance with the MOU. While some SER procedural and policy changes are addressed through memoranda or e-mails based on the level of importance, no system existed at the time of the audit to track all policy changes, thereby affecting the QA/QC of SER changes. The audit identified that a recent revision to SER Chapter 38 resulted in the erroneous omission of Environmental Impact Statements (EISs) from the list of environmental documents required to include a statement on the document cover page regarding Caltrans' assumption of responsibility under 23 U.S.C. 327 and MOU section 3.2.5.

(N3) *Environmental Document Protocols—Class of Action Determination*—The audit team was unable to identify through a review of Pilot Program policies and procedures specified in SER Chapter 38 how a class of action determination is documented. Caltrans staff interviewed indicated that an informal agreement exists to use e-mail correspondence to document decisions on class of action determinations. It is recommended that Caltrans acknowledge in SER Chapter 38 acceptable options for documentation of class of action determinations.

(N4) *Documentation of Pilot Program Procedures in SER 38*—SER Chapter 38 requires that the signatory of each environment document be informed of the completion of the environmental document QA/QC review process before signing the document. It is recommended that Caltrans acknowledge in SER Chapter 38 acceptable options to convey the recommendation to the signatory official that all QA/QC review certification forms have been completed.

(N5) *Execution of the Legal Sufficiency Review Process*—The first environmental document submitted for formal legal sufficiency review was not submitted in accordance with the procedures specified in the October 15, 2007, memorandum titled: ''Procedures for Determining Legal Sufficiency for Environmental Documents under the NEPA Pilot Program'' (nor, by reference, DEA's July 2, 2007, memorandum, ''Environmental Document Quality Control Program under the NEPA Pilot Program''). As this new process comes into use, Caltrans should actively monitor conformance and provide additional training as needed.

(N6) *Pilot Program Self-Assessment*—Caltrans' self-assessment process needs

improvement to ensure it fully complies with MOU section 8.2.6. Specifically, the first self-assessment conducted by Caltrans under the Pilot Program did not correlate each identified issue needing improvement to the corrective action(s) taken to address each issue.

Findings—Deficient

(D1) *QA/QC Process*—Caltrans requires each environmental document to be reviewed according to the policy memo titled ''Environmental Document Quality Control Program under the NEPA Pilot Program (July 2, 2007).'' Several deficiencies exist with the quality control process detailed in the aforementioned policy memo, SER Chapter 38, and as required by MOU section 8.2.5. These deficiencies are:

a. Completion of Quality Control Certification Forms. The required Internal and External Certification forms used in the environmental document review process were not consistently completed prior to the approval of each environmental document. The QC policy memo requires that ''all staff personnel who have served as a reviewer on a project document shall sign a Quality Control Certification Form at the conclusion of their review. The reviewer's signature certifies that the document meets professional standards and Federal and State requirements in the reviewer's area of expertise, and is consistent with the SER and annotated outlines.'' Seven of 11 documents examined identified where the signatory approved the environmental document prior to the completion of the document review process (i.e., before the Quality Control Certification Form was completed).

b. Inconsistent Completion of the Environmental Document Preparation and Review Tool Checklist and the Resource/Technical Specialist Review Certification on the Internal and External Quality Control Certification Forms. For EAs and EISs, the specific resource topics identified in the Environmental Document Preparation and Review Tool Checklist were not always consistent with the resource topics indicated on the Resource/Technical Specialist Review Certification forms for the same document.

c. The Peer Reviewer for 3 of 11 environmental documents examined under the audit did not meet the requirement in SER Chapter 38 to be ''a staff member who has not participated in, supervised or technically reviewed the project.''

(D2) *Pilot Program Self-Assessment*—Caltrans' self-assessment process failed to fully comply with MOU section 8.2.6 which requires the identification of ''any areas needing improvement.'' The Caltrans self-assessment (which reviewed the completion of the Quality Control Certification forms) did not identify that in some cases the peer reviewer function was not performed according to SER Chapter 38 policy. The policy requires an independent review by environmental staff not otherwise involved in the project. The self assessment did not identify that on 3 of 11 QA/QC certification forms (reviewed under this audit and the self assessment) used on EA and EIS projects, the person signing as the peer reviewer also signed as a technical expert.

(D3) *Records Management*—The project filing system in place at District 4 did not meet the Caltrans Uniform Filing System requirements as specified in the ''Record Keeping and Retention'' section of the Caltrans Application. This determination was made by the Audit Team through interviews with district personnel during the on-site audit. The Uniform Filing System is the records management method chosen by Caltrans to comply with the records retention requirements in MOU section 8.3. This filing system was not in use and was not implemented as described in the Application and SER Chapter 38.

(D4) *Statement Regarding Assumption of Responsibility*—MOU section 3.2.5 requires language regarding Caltrans' assumption of responsibility under 23 U.S.C. 327 be included on the cover page of each environmental document for all assumed Pilot Program projects. The cover pages for two Draft EIS documents and one EA reviewed during the audit did not include this required statement.

Response to Comments and Finalization of Report

Only one comment was received by FHWA during the 60-day comment period for the draft audit report. This comment was submitted by the Caltrans on July 31, 2008. Caltrans wished to thank FHWA for the opportunity to participate in the pilot program, an ''opportunity to test a new model for implementing the Secretary of transportation's environmental responsibilities.'' Caltrans also stated that their relationship with FHWA continues to be ''strong and healthy.'' Their comment also stated that they were pleased with the FHWA audit opinion. They take the pilot program responsibilities and commitments seriously and appreciate FHWA's audit input and findings as they assist Caltrans in continuous improvement.

The FHWA feels that there was no need to revise the draft audit report findings to be responsive to this comment, with the exception of making the ''Background'' section current and the addition of this section.

[FR Doc. E8–22131 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0231]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 23 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective September 23, 2008. The exemptions expire on September 23, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or 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 Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want

acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov.*

Background

On August 12, 2008, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (73 FR 46973). That notice listed 23 applicants' case histories. The 23 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 23 applications on their merits and made a determination to grant exemptions to all of them. The comment period closed on September 11, 2008.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 23 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, prosthesis, aphakia, macular scar, corneal scarring, hyperopia, exotropia, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but six of the applicants were either born with their vision impairments or have had them since childhood. The six individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 15 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 23 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 43 years. In the past 3 years, two of the drivers had convictions for traffic violations and four of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 12, 2008 notice (73 FR 46973).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal

of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 23 applicants, two of the applicants had a traffic violation for speeding, one of the applicants had a traffic violation for failure unsafe lane changes, one of the applicants had a traffic violation for following another vehicle too closely, and four of the applicants were involved in crashes. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to 67 of the 23 applicants listed in the notice of August 12, 2008 (73 FR 46973).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 23 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA exempts, William C. Ball, Terrence L. Benning, Rickie L. Boone, Robert S. Bowen, Dennis R. Buszkiewicz, Larry T. Byrley, Robert J. Clarke, Eldon D. Cochran, Alfred A. Constantino, James R. Corley, Larry D. Curry, Brian F. Denning, Michael W. Dillard, Kelly M. Greene, Sammy K. Hines, John H. Holmberg, Gary R. Lomen, Leonardo Lopez, Jr., Jeffrey F. Meier, James G. Mitchell, Billy R. Pierce, James A. Rapp, and Thomas P. Shank from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 17, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–22226 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement on the Proposed Southwest Transitway Project in Hennepin, Minnesota

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement on the Proposed Southwest Transitway Project in Hennepin County, Minnesota.

SUMMARY: The Federal Transit Administration (FTA) and the Hennepin County Regional Railroad Authority (HCRRA) are planning to prepare an environmental impact statement (EIS) for the proposed Southwest Transitway Project, a 14-mile corridor of transportation improvements that links Eden Prairie, Minnetonka, Edina, Hopkins, St. Louis Park, and Minneapolis neighborhoods and

downtown Minneapolis. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), Minnesota Environmental Policy Act (MEPA) as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this Notice of Intent (NOI) is to alert interested parties regarding the plan to prepare the EIS to provide information on the nature of the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS, including the project purpose and need, the alternatives to be studied, and the potential social, economic, environmental and transportation impacts to be evaluated.

DATES: Written comments on the scope of the EIS by all interested individuals and organizations, public agencies, and Native American Tribes on the scope of the EIS, including the purpose and need for the proposed action; alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives; and the identification of any significant social, economic, or environmental issues relating to the alternatives are invited. Public scoping meetings will be held to accept comments on the scope of the EIS. The scoping meetings will be composed of a one hour public open house followed by a formal public hearing hosted by the HCRRA and will be held at the following locations on the following dates:

Tuesday, October 7, 2008: 2 p.m. open house, 3 p.m. public hearing, Hennepin County Government Center, 300 South 6th Street, Minneapolis, MN 55487.

Tuesday October 14, 2008: 5 p.m. open house, 6 p.m. public hearing, St. Louis Park City Hall, 5005 Minnetonka Boulevard, St. Louis Park, MN 55416.

Thursday, October 23, 2008: 5 p.m. open house, 6 p.m. public hearing, Eden Prairie City Hall, 8080 Mitchell Road, Eden Prairie, MN 55344

The locations for all scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Katie Walker, AICP, Transit Project Manager, Hennepin County, Housing, Community Works & Transit, 417 North 5th Street, Suite 320, Minneapolis, MN 55401, Telephone: (612) 348–9260; e-mail: *Katie.Walker@co.hennepin.mn.us.* Requests for special assistance should be made two weeks in advance of the scheduled meeting.

Scoping materials will be available at the meetings and are available by clicking on the Southwest Transitway Web site at *www.southwesttransitway.org.* Hard copies of the scoping materials are available from Ms. Katie Walker, AICP, at 417 North 5th Street, Suite 320, Minneapolis, MN 55401, Telephone: (612) 348–2190; e-mail: *Katie.Walker@co.hennepin.mn.us.* An interagency scoping meeting will be scheduled with agencies having an interest in the proposed project.

In addition to receiving comments at the public hearings, the public may submit comments by e-mail, mail, fax, or via the Web site.

ADDRESSES: *Written Comments Should Be Sent To:* Ms. Katie Walker, AICP, Transit Project Manager, Hennepin County, Housing, Community Works & Transit, 417 North 5th Street, Suite 320, Minneapolis, MN 55401, Telephone: (612) 348–2190; e-mail: *Katie.Walker@co.hennepin.mn.us.*; Fax: (612) 348–9710; or can be made at *www.southwesttransitway.org.* Comments will be accepted until 5 PM on November 7, 2008.

FOR FURTHER INFORMATION, CONTACT: Mr. David Werner at FTA, Region V, 200 West Adams Street, Suite 320, Chicago, Illinois 60606, Telephone: (312) 353–2789; e-mail: *David.Werner@dot.gov.*

SUPPLEMENTARY INFORMATION: The Proposed Project would provide for transit improvements within the Southwest Corridor, which extends approximately 14 miles from downtown Minneapolis to Eden Prairie through St. Louis Park, Hopkins, and Minnetonka. The proposed project was the subject of an Alternatives Analysis (AA), which recommended three light rail transit (LRT) alternatives and one Enhanced Bus alternative for inclusion in an Environmental Impact Statement (EIS). The proposed project would provide high-frequency (7.5 minute peak), bi-directional transit service 20 hours per day seven days per week. Stations are proposed at ½ to 1 mile intervals providing service to key activity centers including, but not limited to, downtown Minneapolis, the new Twins Baseball Stadium, the Walker Art Center, the Minneapolis Convention Center, Eat Street, Uptown, Calhoun Village/Commons, Methodist Hospital, Excelsior/Grand, Cargill, SuperValu, Opus, Golden Triangle, and the Eden Prairie Center Mall.

Purpose and Need for the Project

The intent of the Southwest Transitway Project is to improve mobility, further develop multi-modal options, and increase transportation choices for the traveling public. The overall goals of the proposed project are to: (1) Improve mobility; (2) provide a cost-effective, efficient travel option; (3) protect the environment; (4) preserve and protect the quality of life in the study area and the region; and, (5) support economic development.

The Southwest Transitway was first identified as a potential transitway in the mid-1980s reflecting the projected strong growth for this area by the Metropolitan Council. Since the mid-1980s numerous studies by the Metropolitan Council, Mn/DOT, and Hennepin County have documented the transportation needs of the study area. These studies are available for review at the Southwest Transitway Web site *www.southwesttransitway.org.* The Southwest Transitway is identified in the Metropolitan Council's Transportation Policy Plan (TPP) as a Tier 2 transitway *www.metrocouncil.org.*

With Southwest Transitway communities projected to encompass 25 percent of the regional employment base by 2030, the Twin Cities region needs to maintain the ability to travel to, from, and through Southwest Transitway communities efficiently, and at acceptable cost. The six communities that make up the Southwest Transitway study area need to accommodate additional transportation capacity while preserving the corridor's business advantages, environmental features, and quality of life for residents.

Additional considerations supporting the project's need include:

Declining mobility is being experienced by residents, workers and visitors to the study area. This is caused by travel resulting from the high employment and residential growth of the area, which is outstripping the capacity of the existing transportation system. Currently 27 percent of all regional trips begin or end in the corridor and 65 percent of the trips generated within the corridor stay in the corridor. The study area includes two of the region's largest employment centers, downtown Minneapolis with over 140,000 jobs, and Golden Triangle with over 50,000 jobs. Travel on area roadways has increased by 80 to 150 percent over the past 25 years. This has led to increasing congestion with no plans by the state, region or county to significantly expand the roadway system. The area is projected to

continue to grow with a significant portion of the 1 million people and 500,000 jobs the region expects to add by 2030 locating within the study area.

Competitive, reliable transit options are not available for many study area choice riders and transit dependent persons. Due to congested roadways and circuitous roadway networks, it is difficult to provide the significant travel time advantages that would attract choice riders to the transit system and to adequately serve transit-dependent people living in and around downtown Minneapolis attempting to access the growing job base in the study area. The study area roadway network is oriented north-south/east-west where development patterns have radiated outward from downtown Minneapolis on a diagonal. The number of transit-dependent people is growing in the study area, primarily in and around downtown Minneapolis. The roadway network through these neighborhoods is circuitous and has many one-way streets.

Alternatives To Be Considered

After a two-year study of transit alternatives, three light rail transit routes (Build Alternatives) have been identified for further evaluation in the EIS to determine which would best serve the study area. Other alternatives currently under consideration include a future No-Build Alternative, and a Transportation Systems Management (TSM) Alternative, also known as Enhanced Bus.

Build Alternatives To Be Considered

Light Rail Transit 1A: This alternative would operate from downtown Minneapolis to Eden Prairie (TH 5) via an extension of the Hiawatha LRT tracks on 5th Street past the downtown Minneapolis Intermodal Station to Royalston Avenue to the Kenilworth Corridor through Minneapolis and the HCRRA property through St. Louis Park, Hopkins, Minnetonka and Eden Prairie terminating at TH 5 and the HCRRA's property. Stations are proposed at Royalston Ave., Van White Blvd., Penn Ave., 21st St., West Lake St., Beltline Blvd., Wooddale Ave., Louisiana Ave., Blake Rd. downtown Hopkins, Shady Oak Rd., Rowland Rd., TH 62, and TH 5.

Light Rail Transit 3A: This alternative would operate from downtown Minneapolis to Eden Prairie (Mitchell Road/TH 5) via an extension of the Hiawatha LRT tracks on 5th Street past the downtown Minneapolis Intermodal Station to Royalston Avenue to the Kenilworth Corridor through Minneapolis, the HCRRA property in St. Louis Park and Hopkins, to new right-of-way through the Opus/Golden Triangle area, the Eden Prairie Major Center area terminating at TH 5 and Mitchell Road. Stations are proposed at Royalston Ave., Van White Blvd., Penn Ave., 21st St., West Lake St., Beltline Blvd. Wooddale Ave., Louisiana Ave., Blake Rd., downtown Hopkins, Shady Oak Rd., Opus, City West, Golden Triangle, Eden Prairie Town Center, SouthWest Station, and Mitchell Rd.

Light Rail Transit 3C: This alternative would operate from downtown Minneapolis to Eden Prairie (Mitchell Road/TH 5) via Nicollet Mall to Nicollet Avenue (tunnel from Franklin Avenue to 28th Street), the Midtown Corridor through Minneapolis, the HCRRA property in St. Louis Park and Hopkins, to new right-of-way through the Opus/Golden Triangle, the Eden Prairie Major Center area terminating at TH 5 and Mitchell Road. Stations are proposed at 4th St., 8th St., 12th St., Franklin Ave., 28th St., Lyndale Ave., Hennepin Ave., West Lake St., Beltline Blvd., Wooddale Ave., Louisiana Ave., Blake Rd., downtown Hopkins, Shady Oak Rd., Opus, City West, Golden Triangle, Eden Prairie Town Center, SouthWest Station, and Mitchell Rd.

No-Build Alternative

The No-Build Alternative contemplates roadway and transit facility and service improvements (other than the proposed project) planned, programmed and included in the Financially Constrained Regional Transportation Policy Plan to be implemented by the Year 2030. It includes minor transit service expansions and/or adjustments that reflect a continuation of existing service policies as identified by the Metropolitan Council. The No-Build Alternative serves as the NEPA baseline against which environmental effects of other alternatives, including the proposed project, will be measured.

Transportation Systems Management (TSM) Alternative

The TSM Alternative (Enhanced Bus) is designed to provide lower cost, operationally-oriented improvements to address the project's purpose and need as much as possible without a major transit investment. It includes minor modifications to the existing express service, and would augment Metro Transit and SouthWest Transit service between Minneapolis and Eden Prairie, Minnetonka, Hopkins, and St. Louis Park. This alternative will serve as the New Starts Baseline against which the cost-effectiveness of the proposed project will be measured, and includes improvements identified in the No-Build Alternative.

In addition to the above described alternatives, other additional reasonable transit alternatives identified through the scoping process that provide similar transportation benefits while reducing or avoiding adverse impacts will be evaluated for potential inclusion in the EIS. Because of the sensitive adjacent land uses located in many parts of this corridor, all alternatives will need to consider a full range of design and mitigation solutions to enlist the support of local communities for the completion of this line.

Probable Effects

The EIS Process and the Role of Participating Agencies and the Public

The purpose of the EIS process is to explore in a public setting the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and the HCRRA will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: transportation; land use, zoning, and economic development; secondary development; land acquisition, displacements, and relocations; cultural resource, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration; energy use; safety and security; wildlife and ecosystems, including endangered species. Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

Regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEAU–LU requires that FTA and the HCRRA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Indian tribes that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS, and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An

invitation to become a participating agency, with the scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and the HCRRA will not be able to identify all Federal and non-Federal agencies and tribes that may have such an interest. Any Federal or non-Federal agency or tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify, at the earliest opportunity, the Project Manager identified above under **ADDRESSES.**

A comprehensive public involvement program will be developed and a Coordination Plan for public and interagency involvement will be created and posted on the project Web site at *www.southwesttransitway.org.*

The public involvement program includes a full range of involvement activities including the project Web site (referenced above); outreach to local officials, community and civic groups, and the public; and development and distribution of project newsletters. Specific mechanisms for involvement will be detailed in the public involvement program.

The public and participating agencies are invited to consider and comment on this preliminary statement of the purpose and need for the proposed Southwest Transitway project. Suggestions for modifications to the statement of purpose and need for the proposed project are welcome and will be given serious consideration. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are also welcome. There will be additional opportunities to participate in the scoping process at the public meetings announced in this notice.

The HCRRA will be seeking New Starts funding for the proposed project under 49 U.S.C. 5309 and, therefore, will be subject to New Starts regulations (49 CFR Part 611). The New Starts regulation requires a planning Alternatives Analysis that leads to the selection of a locally preferred alternative and the inclusion of the locally preferred alternative as part of the long-range transportation plan adopted by the Metropolitan Council. The New Starts regulation also requires the submission of certain project-justification information in support of a request to initiate preliminary engineering, and this information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the Final EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800), the regulation implementing Section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) of the Department of Transportation Act (23 CFR 771.135), and Executive Orders 12898 on Environmental justice, 11988 on Floodplain Management, and 11990 on Wetlands.

Issued on September 18, 2008.

Marisol R. Simon,

Regional Administrator, Region V, Federal Transit Administration.

[FR Doc. E8–22257 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 18, 2008, and comments were due by August 18, 2008. No comments were received.

DATES: Comments must be submitted on or before October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhart, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1867; or e-mail: *beth.gearhart@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Shipbuilding Orderbook and Shipyard Employment.

OMB Control Number: 2133–0029.

Type Of Request: Extension of currently approved collection.

Affected Public: Owners of U.S. shipyards who agree to complete the requested information.

Forms: MA–832.

Abstract: MARAD collects this information from the shipbuilding and ship repair industry primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency.

Annual Estimated Burden Hours: 400 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on September 15, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22135 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on July 10, 2008, and comments were due by September 8, 2008. No comments were received.

DATES: Comments must be submitted on or before October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Otto Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4161; FAX: 202–366–7901; or e-mail: *joe.strassburg@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Seamen's Claims—Administrative Action and Litigation.

OMB Control Number: 2133–0522.

Type of Request: Extension of currently approved collection.

Affected Public: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included are surviving dependents, beneficiaries, and legal representatives of officers or crew members.

Forms: None.

Abstract: The collection consists of information obtained from claimants for death, injury, or illness suffered while serving as officers or members of a crew on board a vessel owned or operated by the United States. The Maritime Administration reviews the information and makes a determination regarding the issues of agency and vessel liability and the reasonableness of the recovery demand.

Annual Estimated Burden Hours: 750 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on September 15, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22136 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad 2008 0088]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Rita Jackson by Telephone: 202–366–0248; or e-mail: *rita.jackson@dot.gov,* or Anne Dougherty by Telephone: 202–366–5469; or e-mail: *anne.dougherty@dot.gov,* Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Service Obligation Compliance Report and Merchant Marine Reserve U.S. Naval Reserve Annual Report.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0509.

Form Numbers: MA–930.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: The Maritime Education and Training Act of 1980, imposes a service obligation on every graduate of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who received a student incentive payment. This mandatory service obligation is for the Federal financial assistance and graduate to maintain a license as an officer in the merchant marine and to report annually on reserve status, training and employment.

Need and Use of the Information: This information collection is necessary to determine if a graduate of the U.S. Merchant Marine Academy or subsidized State maritime academy graduate is complying with the terms of the service obligation.

Description of Respondents: Graduates of the U.S. Merchant Marine Academy and every subsidized State maritime academy graduate who receive a student incentive payment.

Annual Responses: 1436 response.

Annual Burden: 718 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: September 18, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22227 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0089]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ruth Develbis, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2314; or e-mail: *ruth.develbis@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Records Retention Schedule.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0501.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Section 801, Merchant Marine Act, 1936, as amended, requires retention of records pertaining to financial assistance programs for ship construction and ship operations. These records are required to be retained to permit proper financial review of pertinent records at the conclusion of a contract when the contractor was receiving government financial assistance.

Need and Use of the Information: The information is needed in order that the Maritime Administration may conduct financial reviews of pertinent records at the conclusion of the contract.

Description of Respondents: United States shipping companies receiving government financial aid.

Annual Responses: 1 response.

Annual Burden: 50 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp.*

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: September 18, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22229 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0086]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SERENDIPITY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD–2008–0086 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before October 23, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0086. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SERENDIPITY:

Intended Use: ''Passenger service to/from various ports in the Puget Sound region (including Canada) to supplement existing service by other operators when such service is unable to meet the demand and to develop demand for new service (this will be especially important during the closure of the Hood Canal Bridge in 2009).

Geographic Region: ''Washington State (Puget Sound and adjacent waters including Hood Canal, Strait of Juan de Fuca, San Juan Islands, etc.); and lower British Columbia.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: September 16, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–22137 Filed 9–22–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–355 (Sub-No. 38X)]

Springfield Terminal Railway Company—Discontinuance of Service Exemption—Cumberland and Oxford Counties, ME

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board, on its own motion, is exempting a discontinuance from the prior approval requirements of 49 U.S.C. 10903 for Springfield Terminal Railway Company to discontinue its operations over an approximately 43.81-mile rail line extending from milepost 7.3 to milepost 51.11 in Cumberland and Oxford Counties, ME. This exemption is subject to employee protective conditions.

DATES: The exemption is effective retroactively as of December 17, 1994.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Docket No. AB–355 (Sub-No. 38X), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioner's representative: Robert B. Culliford, Pan Am Railways, Inc., Pease International Airport, Portsmouth, NH 03801.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 16, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–22222 Filed 9–22–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Termination: Trinity Universal Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above-named company under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective September 12, 2008. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2008 Revision, to reflect this change.

With respect to any bonds currently in force with this company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from this company, and bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 12, 2008.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E8–22089 Filed 9–22–08; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Five Individuals and Two Entities Pursuant to Executive Order 13438

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of five newly designated individuals and two newly designated entities whose property and interests in property are blocked pursuant to Executive Order 13438 of July 17, 2007, ''Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq.''

DATES: The designation by the Secretary of the Treasury of the five individuals and two entities identified in this notice pursuant to Executive Order 13438 is effective on September 16, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site

(*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On July 17, 2007, the President issued Executive Order 13438 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, and section 301 of title 3, United States Code. In the Order, the President declared a national emergency to address the threat to the national security and foreign policy of the United States posed by acts of violence threatening the peace and stability of Iraq and undermining efforts to promote economic reconstruction and political reform in Iraq and to provide humanitarian assistance to the Iraqi people.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including any overseas branch, of the following persons: persons who are determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, (1) to have committed, or to pose a significant risk of committing, an act or acts of violence that have the purpose or effect of threatening the peace or stability of Iraq or the Government of Iraq, or undermining efforts to promote economic reconstruction and political reform in Iraq or to provide humanitarian assistance to the Iraqi people; (2) to have materially assisted, sponsored, or provided financial, material, or technical support for, or goods or services in support of, such an act or acts of violence or any person whose property and interests in property are blocked pursuant to the Order; or (3) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On September 16, 2008, the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, designated, pursuant to one or more of the criteria set forth in the Order, five individuals and two entities whose property and interests in property are blocked pursuant to Executive Order 13438.

The list of designees is as follows:

1. SHAHLAI, Abdul Reza (a.k.a. SHAHLAEE, Abdul-Reza; a.k.a. SHAHLAI, Abdol Reza; a.k.a. SHAHLA'I, Abdolreza; a.k.a. SHAHLAI, 'Abdorreza; a.k.a. SHALAI, 'Abd-al Reza; a.k.a. SHALA'I, Abdul Reza; a.k.a. ''ABU-AL-KARKH', 'Yusuf''; a.k.a. ''YASIR, Hajji''; a.k.a. ''YUSEF, Hajj''; a.k.a. ''YUSIF, Haji''; a.k.a. ''YUSIF, Hajji''), Kermanshah, Iran; Mehran Military Base, Ilam Province, Iran; DOB circa 1957.

2. AL-KABI, Arkam 'Abbas (a.k.a. AL-KA'ABI, Shaykh Abu-Akram; a.k.a. AL-KA'ABI, Sheik Akram; a.k.a. AL-KA'BI, Akram Abas; a.k.a. ''ABU-MUHAMMAD''; a.k.a. "'ALI, Abu''; a.k.a. ''KARUMI''); DOB circa 1976; alt. DOB circa 1973; POB al 'Amarah, Iraq; alt. POB al Kalamiy, Iraq; nationality Iraq.

3. AL-DARI, Harith Sulayman (a.k.a. AL DARI, Hareth; a.k.a. AL-DARI AL-ZAWBAI, Harith; a.k.a. AL-DARI, Harith; a.k.a. AL-DAURI, Hareth; a.k.a. AL-DHARI, Harith; a.k.a. AL-DHARI, Harith S.; a.k.a. AL-DURI, Harith; a.k.a. DARI AL-ZAWBA'I, Harith), Abu Ghuraib, Iraq; Jordan; Akashat, Iraq; Qatar; Egypt; DOB 1941; POB Baghdad, Iraq; citizen Iraq; nationality Iraq; Passport N348171/IRAQ (Iraq).

4. AL-UBAYDI, Ahmad Hassan Kaka (a.k.a. AL NOBANI, Ali; a.k.a. AL-OBEIDI, Ahmed Hassan Kaka; a.k.a. HAZIM KAKA), Al Humayra Village, Taza sub district, Iraq; Kurdi Al Nasir village, Iraq; DOB 1949; POB Baghdad, Iraq; nationality Iraq; Passport F032516 (Iraq) issued 4 May 1976.

5. AL-USTA, Raw'a (a.k.a. AL-ASTAH, Raw'ah; a.k.a. AL-OUSTA, Raw'a; a.k.a. ALOUSTA, Rawaa; a.k.a. AL-'USTA, Rawa; a.k.a. AL-USTA, Raw'ah; a.k.a. AL-USTAH, Raw'ah), Damascus, Syria; DOB 1982; nationality Syria.

6. AL-RA'Y SATELLITE TELEVISION CHANNEL (a.k.a. AL RAIE TV CHANNEL; a.k.a. AL RA'Y SATELLITE TELEVISION STATION; a.k.a. AL RA'Y TV; a.k.a. AL-RA'I SATELLITE CHANNEL; a.k.a. AL-RA'Y SATELLITE CHANNEL; a.k.a. ARRAI TV; a.k.a. SATELLITE TELEVISION CHANNEL AL RA'Y; a.k.a. THE OPINION SATELLITE TELEVISION CHANNEL), Near Damascus in the Yaafur area, Syria; e-mail address *info@arrai.tv;* Web site *www.arrai.tv.*

7. SURAQIYA FOR MEDIA AND BROADCASTING (a.k.a. SBC TELEVISION; a.k.a. SBC TV; a.k.a. SORAQIA FOR MEDIA AND BROADCASTING; a.k.a. SORAQIYA FOR MEDIA AND BROADCASTING), Al Sufara' Street in the Ya'fur district, Damascus, Syria.

Dated: September 16, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–22199 Filed 9–22–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection (Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 23, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0620'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0620.''

SUPPLEMENTARY INFORMATION:

Title: Payment and Reimbursement for Emergency Services for Non Service-Connected Conditions in Non-VA Facilities, 38 U.S.C. 1725.

OMB Control Number: 2900–0620.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans enrolled in VA's health-care system are personally liable for emergency treatment rendered at non-VA health facilities. Veterans or

their representative, and the health care provider of the emergency treatment to the veteran must submit a claim in writing or complete a Health Insurance Claim Form CMS 1500 or Medical Uniform Institutional Provider Bill Form UB–04 to request payment or reimbursement for such treatment. VA uses the data collected to determine the claimant's eligibility for payment or reimbursement.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2008, at pages 40912–40913.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Total Annual Burden: 82,690 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 330,759.

Dated: September 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–22186 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Proposed Information Collection (Accelerated Payment Verification of Completion Letter) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether a claimant received his or her accelerated payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 24, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0636'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Accelerated Payment Verification of Completion Letter, VA Form 22–5490.

OMB Control Number: 2900–0636.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants electing to receive an accelerate payment for educational assistance allowance must certify they received such payment and how the payment was used. The data collected is used to determine the claimant's entitlement to accelerated payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,119.

Estimated Annual Responses: 1,798.

Dated: September 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–22187 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection (Application for Survivors' and Dependents' Educational Assistance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's spouse, surviving spouse, or child eligibility for Survivors' and Dependents' Educational Assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 24, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0098'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 is completed by a veteran's spouse, surviving spouse, or children to apply for Survivors' and Dependents' Educational Assistance (DEA) benefits. DEA benefits are payable if the veteran is permanently and totaled disabled, died as a result of a service-connected disability, missing in action, captured or detained for more than 90 days. VA uses the data collected to determine the claimant's eligibility for DEA benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 22,566 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 30,088.

Dated: September 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–22188 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0368]

Agency Information Collection (Monthly Statement of Wages Paid to Trainee) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 23, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0368'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0368.''

SUPPLEMENTARY INFORMATION:

Title: Monthly Statement of Wages Paid to Trainee (Chapter 31, Title 38, U.S.C.), VA Form 28–1917.

OMB Control Number: 2900–0368.

Type of Review: Extension of a currently approved collection.

Abstract: Employers providing on-job or apprenticeship training to veterans complete VA Form 28–1917 to report each veteran's wages during the preceding month. VA uses the information to determine whether the veteran is receiving the appropriate wage increase and correct rate of subsistence allowance. Employers also use the form to document any training difficulties the veteran may be experiencing making it possible for VA's case manager to intervene to assist the veteran in a timely manner.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 16, 2008, at page 40913.

Affected Public: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Annual Burden: 1,800 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 300.

Estimated Total Annual Responses: 3,600.

Dated: September 16, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–22189 Filed 9–22–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
September 23, 2008

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2008; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5217–N–02]

Notice of Regulatory Waiver Requests Granted for the Second Quarter of Calendar Year 2008

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on April 1, 2008 and ending on June 30, 2008.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (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.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the second quarter of calendar year 2008.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from April 1, 2008 through June 30, 2008. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the second quarter of calendar year 2008) before the next report is published (the third quarter of calendar year 2008), HUD will include any additional waivers granted for the second quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: September 15, 2008.

Robert M. Couch,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development April 1, 2008 Through June 30, 2008

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 58.22(a).

Project/Activity: The Lakeview Family Apartments project is a multifamily farm labor housing project in Roberts, Idaho. The project consists of 23 units of multifamily housing and a community building for classes, training, recreation, and a computer lab for residents. Idaho Housing Finance Association requested a waiver to allow the use of $1,057,490 in HOME Investment Partnership (HOME) Program funds. Property was acquired prior to the performance of an environmental review.

Nature of Requirement: The regulation requires that an environmental review be performed and a request for release of funds be completed and certified prior to the

commitment of non-HUD funds to a project using HUD funds.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: May 28, 2008.

Reason Waived: The waiver was granted based on the following findings: The project furthered the objective of providing community development and affordable housing; the errors made in the environmental process for the commitment of non-HUD funds were made in good faith; and an environmental assessment concluded that the granting of the waiver will not result in any adverse environmental impact.

Contact: Danielle Schopp, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7250, Washington, DC 20410–7000, telephone (202) 402–4442.

• Regulations: 24 CFR 92.300(a)(1).

Project/Activity: The City of Spokane, Washington, requested a waiver to allow it to provide a HOME community housing development organization (CHDO) set-aside funds to a limited liability company (LLC) that has a qualified CHDO as its sole managing partner in order to purchase and renovate affordable rental housing in downtown Spokane.

Nature of Requirement: The HOME regulation at 24 CFR 92.300(a)(1) permits a participating jurisdiction to award CHDO set-aside funds to limited partnerships that include a qualified CHDO as the managing partner. LLCs are not an allowable form of CHDO project ownership in the HOME Regulation.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: April 28, 2008.

Reasons Waived: Spokane Housing Ventures (SHV) is a local nonprofit organization that is designated as a CHDO by the City of Spokane. SHV plans to purchase and renovate the Bel Franklin Apartments in downtown Spokane, and the financing is to include HOME CHDO set-aside funds and Low-Income Housing Tax Credits (LIHTC). To facilitate the LIHTC financing, SHV formed the Bel Franklin Apartments LLC (LLC). SHV is the sole member of the LLC with 100 percent ownership of the project. The City sought to provide HOME CHDO set-aside funds to the LLC. LLCs are not an allowable form of CHDO project ownership in the HOME regulations. The City, the CHDO and the LLC have agreed that SHV would be the sole managing member of the Bel Franklin Apartments LLC when the tax credit investors are brought into the transaction and have effective project control over its operation. Ownership would revert to SHV at the end of the 15-year tax compliance period. SHV is to serve as the project developer and property manager. Both SHV and the LLC will be bound by the provisions of the HOME regulations and the partnership operating agreement.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7154, Washington, DC 20410, telephone (202) 708–2470.

• Regulations: 24 CFR 92.500(d)(1)(C).

Project/Activity: The City of Alexandria, Louisiana, requested a waiver of its fiscal year (FY) 2003 expenditure deadline to facilitate its continued recovery from the devastation caused by Hurricanes Katrina and Rita. The City is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Nature of Requirement: 24 CFR 92.500(d)(1)(C) requires that a PJ expend its annual allocation of HOME funds within five years after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted by: Nelson R. Bregón, General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: July 1, 2008.

Reasons Waived: It was determined that the waiver would facilitate the continued recovery of the City of Alexandria from the devastation caused by Hurricane Katrina and Hurricane Rita. The waiver ensures that needed HOME funds are not de-obligated and are available to pay for costs incurred for projects to which HOME funds have already been committed.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7154, Washington, DC 20410–7000, telephone (202) 708–2470.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 203.37a(b)(2).

Project/Activity: FHA-insured properties in certain areas that have been foreclosed.

Nature of Requirement: The regulations at 24 CFR 203.37a(b)(2) require a 90-day waiting period for re-sales of properties to be eligible for FHA-insured mortgage financing with certain categorical exceptions. This waiver requested pertains to existing exemptions of those properties foreclosed on by mortgagees, their subsidiaries, as well as vendors hired by exempt entities to sell their real estate owned.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: June 9, 2008.

Reason Waived: It was determined that waiving the regulations would allow properties acquired by foreclosure by FHA-approved mortgagees to become eligible for FHA-insured financing during the 90-day period. The waiver reduces holding costs to mortgage lenders and lessens the likelihood of property value deterioration to adjoining and near-by properties as well as to the properties acquired by foreclosure.

Contact: James Beavers, Deputy Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room 9166, Washington, DC 20410–8000, telephone (202) 708–2121.

• Regulation: 24 CFR 203.41(b).

Project/Activity: Chequamegon Village, Bozeman, Montana, being purchased by two member family.

Nature of Requirement: Section 203.41(b) of the FHA regulations in 24 CFR part 203 provides that the mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance (except as otherwise permitted under the regulations). Properties at Chequamegon Village contain legal restrictions limiting ownership to occupant mortgagors, covenants that would remain in force even if FHA acquired the property as the result of a foreclosure. This deed restriction could limit the potential pool of possible buyers and/or reduce the proceeds of sale should FHA need to sell the property.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 21, 2008.

Reason Waived: The mortgage loan proposed for the family would be in an amount that represents approximately 62% loan to value ratio. Because of the large amount of equity in the property

(38%), it is unlikely that FHA would incur a claim for benefits and if it did, it is unlikely FHA would suffer a loss. The waiver was determined necessary so that the family could obtain a Montana Board of Housing Disabled Accessible Affordable Mortgage at 2.75% financing.

Contact: James Beavers, Deputy Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room 9166, Washington, DC 20410–8000, telephone (202) 708–2121.

• Regulation: 24 CFR 236.725(e)(2).

Project/Activity: Brookdale Village, Far Rockaway Queens, New York—FHA Project Number 012–119NI/012–11023. A request was made for continuation of Rental Assistance Payments (RAP) after the payoff of the original non-insured Section 236 mortgage under a Section 236(e)(2) Decoupling transaction.

Nature of Requirement: Section 236.725 of the FHA regulations in 24 CFR part 236 relates to rental assistance contracts, limiting such contracts to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 20, 2008.

Reason Waived: This waiver was granted because it was determined that the project would be maintained as an affordable housing resource to the maturity date of the non-insured Section 236 mortgage plus an additional five years, through the execution and recording of a Decoupling Use Agreement. This waiver was predicated on the fact that the Decoupling proposal would not request an increase in the Section 236 units, and therefore the rental assistance payment (RAP) subsidy would not increase as a result. Future RAP increases would be based on budget driven project operating cost increases that would not include any new debt service costs attributable to the decoupling transaction. The waiver was also based on the fact that the project owner enter into a Decoupling Use Restriction Agreement prescribed by the Section 236(e)(2) Decoupling program.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 290.30(a).

Project/Activity: 1775 Houses, New York, New York—FHA Project Numbers 012–57005P and 012–57005T, and AK Houses, New York, New York—FHA Project Numbers 012–57082P and 012–57082T. The owners requested prepayment approval of their two respective HUD-Held mortgages. In addition, the owners requested HUD to assign the mortgages to the purchasing entity's new mortgagee for mortgage recording tax savings in the state of New York.

Nature of Requirement: HUD's regulations governing the sale of HUD-Held mortgages are set forth in 24 CFR part 290, subpart B. Section 290.30(a) of those regulations state that ''[e]xcept as otherwise provided in Section 290.31(a)(2), HUD will sell HUD-Held multifamily mortgages on a competitive basis.'' Section 290.31(a)(2) permits ''negotiated'' sales to state or local governments for mortgage loans that are current and secured by subsidized projects, provided such loans are sold with FHA insurance.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2008.

Reason Waived: Waiver of the regulations covering the sale of HUD-Held mortgages to allow the non-competitive sale of the HUD-Held mortgages securing the project with FHA insurance was approved. Good cause was shown that it is in the public interest and consistent with HUD's objectives to waive the appropriate regulations in order to permit the noncompetitive sale to Prudential Affordable Mortgage Company. Prudential Affordable Mortgage Company will pay HUD in full for all loan balances.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–3730, extension 2598.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Montachusett Ayer Senior Housing, Boston, MA, Project Number: 023–EE209.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 10, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Liberty Place Apartments, Erie County, PA, Project Number: 033–HD100.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Bay Minette VOA Housing, Inc., Birmingham, AL, Project Number: 062–HD061.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 18, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Dauphin County VOA Living Center, Philadelphia, PA, Project Number: 034–HD087.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 18, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Disciples Village II, Odessa, Fort Worth, TX, Project Number: 113–EE059.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Osmundsen Court, Little Rock, AR, Project Number: 082–HD091/AR37Q061001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: April 25, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Russellville Senior Housing, Russellville, KY, Project Number: 083–EE102–NP–WAH/KY36–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Sayre Christian Village Apartments II, Lexington, KY, Project Number: 083–EE101–NP–WAH/KY36–S061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: La Casa De Ampi, San Juan, PR, Project Number: 056–HD027.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 6, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Bentley Woods, Columbus, OH, Project Number: 046–EE088.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Pecan Grove Apartments, Little Rock, AR, Project Number: 082–HD095.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 7, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Warren-Yazoo Mental Health Services, Vicksburg, MS, Project Number: 065–HD037.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: SCARC Residential Expansion Project, Newark, NJ, Project Number: 031–HD151.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: The Maples Apartments, Kansas City, KS, Project Number: 084–HD055.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Prospect Manor, Nashville, TN, Project Number: 086–HD037.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Village of Hope, Nashville, TN, Project Number: 086–HD038.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 20, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Disciples Village II, Odessa, TX, Project Number: 113–EE059/TX16S061006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 21, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: NewLife Home 6, Albuquerque, NM, Project Number: 116–HD032/NM16Q071001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 22, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Odenton Senior Housing II, Odenton, MD, Project Number: 052–EE056.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Southern Hills Senior Residences, Wichita, KS, Project Number: 102–EE029.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 28, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: TCOA Elderly Housing, Fort Worth, TX, Project Number: 064–EE205.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 5, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Dauphin County VOA Living Center, Harrisburg, PA, Project Number: 034–HD087.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 12, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Benedictine Manor II, Jonesboro, AR, Project Number: 082–EE176.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Peachtree III, Columbus, OH, Project Number: 042–HD137.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant 77Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Living Solutions II, Mora, MN, Project Number: 092–EE123.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Benedictine Manor I, Little Rock, AR, Project Number: 082–EE175.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 13, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Eaton Place, Franklin, MA, Project Number: 023–EE198.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Robin's Terrace, Columbus, OH, Project Number: 042–EE201.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 23, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.120(c).

Project/Activity: Red Lake Homeless Shelter, Minneapolis, MN, Project Number: 092–HD069/MN46Q061002.

Nature of Requirement: Section 891.120(c) the use of HUD funding to cover the cost of acquisition and/or related operating expenses for excess amenities.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 9, 2008.

Reason Waived: The regulation was waived because the project consists of scattered sites that are located in areas not easily accessible to laundry facilities and weather conditions in Northern Minnesota can be extremely severe during the winter months.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130(a).

Project/Activity: Mohr Place II, Kansas City, KS, Project Number: 102–EE028.

Nature of Requirement: Section 891.130(a) permits the sponsor to sell the site for the subject project to the owner.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 8, 2008.

Reason Waived: HUD no longer considers a relationship involving a land sale transaction between the sponsor and its affiliated owner to be a prohibited relationship. The regulations are to be revised reflect this as a permissible relationship.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Deer Creek Manor, Chicago, IL, Project Number: 072–EE161.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2008.

Reason Waived: The project experienced delays while the sponsor/owner located a contractor. Additional time was needed for the firm commitment to be processed and the sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Candice Homes, Chicago, IL, Project Number: 071–HD153.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 2, 2008.

Reason Waived: The project experienced delays while the sponsor/owner located a new site. Additional time was needed for the firm commitment to be processed and the sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Clovernook Housing, Columbus, OH, Project Number: 046–HD033.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 3, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Aliff Place, Charleston, WV, Project Number: 045–HD040.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2008.

Reason Waived: Additional time was needed for the submittal and review of the closing documents and the sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Vesta Severn, Baltimore, MD, Project Number: 052–HD069.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Casa Grande Senior Housing, San Francisco, CA, Project Number: 121–EE196.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 23, 2008.

Reason Waived: Additional time was needed for this mixed finance project to complete the cost certification process, meet tax limited partner requirements, and the sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Peachtree III, Cuyahoga Falls, OH, Project Number: 042–HD137.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and additional time was needed for the firm commitment to be issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Robins Terrace, Columbus, OH, Project Number: 042–EE201.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 25, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and additional time was needed for the firm commitment application to be processed and issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Dauphin County VOA Living Center, Dauphin County, PA, Project Number: 034–HD087–CMI/PA26–Q051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 1, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and additional time was needed for the sponsor/owner to secure secondary funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Garrett House, Wilmington, DE, Project Number: 032–HD036–WPD/DE26–Q061–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and additional time was needed for the firm commitment application to be processed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Haven Peniel Senior Citizens Residence, Philadelphia, PA, Project Number: 034–EE151/PA26–S061–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 5, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and to resolve site contamination issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: The Village of St. Martha's, Detroit, MI, Project Number: 044–EE104.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 8, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Ken-Crest PA 2006, Philadelphia, PA, Project Number: 034–HD093–PDD/P26–Q061–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 9, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and to resolve zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Bank Street Apartments, Providence, RI, Project Number: 016–HD049.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 9, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for

initial closing, and to resolve litigation issues with the Town Council.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165

Project/Activity: Woodside Village Apartments, Cleveland, OH, Project Number: 042–HD112.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and to resubmit the design change to the local plan board for approval and to resubmit the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: The Meadows, Providence, RI, Project Number: 016–EE046.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2008.

Reason Waived: The mixed-finance project needs additional time to close.Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: TBD, Warwick, RI, Project Number: 016–EE059.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 14, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and to finalize the plans and specifications based on the new site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Project Beginnings I, Akron & Lamemore Village, Cleveland, OH, Project Number: 042–HD129.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 6, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Black Diamond Hope House, Philadelphia, PA, Project Number: 032–HD033.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2008.

Reason Waived: The sponsor/owner required additional time to prepare for initial closing, and additional time was needed to review initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165

Project/Activity: Webb Avenue Senior Housing, New York, NY, Project Number: 012–EE335.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 8, 2008

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: Moffat Gardens Senior Housing, New York, NY, Project Number: 012–EE333.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 22, 2008.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: Miller Road Group Home, Boston, MA, Project Number: 023–HD179.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 15, 2008.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: Webster Street Residence, Boston, MA

Project Number: 023–HD200/MA06Q031008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 18, 2008.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: Epworth Manor II, Richmond, VA, Project Number: 051–EE104.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 20, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6134 Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: Emerson Manor II, Boston, MA, Project Number: 023–EE170.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 20, 2008.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d) & 24 CFR 891.165.

Project/Activity: AP's Apartments, Exmore,VA, Project Number: 051–HD134.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 25, 2008.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. The sponsor/owner required additional time to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134 Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.205.

Project/Activity: AHEPA Bloomington, Bloomington, MN, Project Number: 092–EE127.

Nature of Requirement: Section 891.205 requires Section 202 and Section 811 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the Internal Revenue Code (IRC).

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 8, 2008.

Reason Waived: The sponsor/owner had requested the section 501(c)(3) IRC tax exemption but had not received it in time for the initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.205.

Project/Activity: Robbins Way Senior Housing, Robbinsdale, MN, Project Number: 092–EE129.

Nature of Requirement: Section 891.205 requires Section 202 and Section 811 project owners to have tax exemption status under section 501(c)(3) or (c)(4) of the IRC.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 10, 2008.

Reason Waived: The sponsor/owner had requested the section 501(c)(3) IRC tax exemption but had not received it in time for the initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Parker Heights Apartments, Parker City Borough, Pennsylvania, FHA Project Number 033–EE019. The owner/managing agent requested an extension of the very low-income restriction and elderly restriction waiver in order to permit admission of low-income elderly applicants.

Nature of Requirement: Section 891.410 addresses admission of families to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 15, 2008.

Reason Waived: The property contains 11 vacant units with no applicants on the waiting list. The property is located in a rural setting and the local housing market indicates that there is not sufficient demand for very low-income elderly housing. The owner/managing agent continues to aggressively market the property with the local housing authorities and various religious, social and community organizations. It was determined that granting the waiver would allow the owner/managing agent an opportunity to stabilize the project's current financial status, and prevent foreclosure. It also was determined that first priority would be given to all qualified applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Sunset Heights Apartments, Waukesha, Wisconsin, FHA, Project Number 075–EE036. The property is currently experiencing vacancy problems and high turnover rate at the 17-unit property.

Nature of Requirement: Section 891.410 addresses admission of families to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 6, 2008.

Reason Waived: This regulatory waiver was granted because if continued, the current vacancy and high turnover rates would cause financial hardship for the project. The owner/managing agent was unable to attract very low-income elderly persons. The owner/managing agent continues to aggressively market the property with the local housing authorities and news media. The waiver was granted to allow the owner the ability to offer units to individuals who meet the definition of lower income, near elderly, which should increase occupancy levels at the property and, therefore, stabilize the project's current financial status. It was determined that first priority would be given to all qualified eligible applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–7000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Pioneer Place III, Poynette, Wisconsin—FHA Project Number 075–EE010. This project continues to experience difficulty in leasing its units to very low-income elderly tenants.

Nature of Requirement: Section 891.410 addresses admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959, as amended by Section 801 of the National Affordable Housing Act of 1990. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: May 12, 2008.

Reason Waived: The project experienced difficulty in renting its units since initial occupancy in April 1994. Currently 17 of 22 units are occupied, and there are no applicants that meet the age waiver criteria on the waiting list. The owner/managing agent continues to aggressively market the property with the Central Wisconsin Community Action Council and news media. The provisions of 24 CFR 891.410(c) were waived in order to allow the agent to lease to individuals between the ages of 55 and 62 years of age, thereby allowing the owner to increase occupancy and save the project from failing. Priority admission would continue for applicants who meet the Section 202 very low-income guidelines.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.805.

Project/Activity: Serviam Gardens, New York, NY, Project Number: 012–EE353.

Nature of Requirement: Section 891.805 requires that the project owner be a single purpose for-profit limited partnership of which a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption status is the sole general partner.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2008.

Reason Waived: The sponsor requested that the sole general partner be a limited liability company with a single member under the New York Limited Liability Company Law and its membership interest will be owned by the sponsor. The organizational documents will prohibit private inurnment and private benefit, as do the sponsor's organizational documents. This will prevent the tax credit investor's return from being impacted by any portion of the capital advance monies being treated as taxable income.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.805.

Project/Activity: Charleston Apartments, Seattle, WA, Project Number: 126–HD044.

Nature of Requirement: Section 891.805 requires that the project owner be a single purpose for-profit limited partnership of which a private nonprofit organization with a section 501(c)(3) or 501(c)(4) tax exemption status is the sole general partner.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: June 5, 2008.

Reason Waived: The sponsor requested that the sole general partner be a limited liability company with a single member and its membership interest will be owned by the sponsor. The organizational documents will prohibit private inurnment and private benefit. Pursuant to Department of Treasury regulation section 301.7701–3(b)(1)(ii), a limited liability company has only one member and will be treated as a disregarded entity for federal tax purposes and its operations and finances will be treated as the operation and finances of the exempt organization.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.830(b) & 24 CFR 891.830(c)(4).

Project/Activity: Charleston Apartments, Seattle, WA, Project Number: 126–HD044.

Nature of Requirement: Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds in accordance with a drawdown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 17, 2008.

Reason Waived: In order to not delay the construction of this mixed finance project, the waiver was granted to permit the capital advance funds to be drawn down using a different mechanism other than a pro rata basis, as approved by HUD. However, the capital advance funds would not be drawn down any faster than a pro rata disbursement basis would have permitted. The owner sought to use the release of capital advance funding upon the completion of the project procedure, which recognizes a conventionally financed construction loan that would pay for many items that are eligible for capital advance funding. 891.830(c)(4)

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.830(c)(4).

Project/Activity: Lyons Place, Columbus, OH, Project Number: 046–EE078.

Nature of Requirement: Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: April 11, 2008.

Reason Waived: Since this is a mixed finance project, the waiver was granted to permit capital advance funds to be used to pay off that portion of a bridge or construction financing that strictly relate to capital advance eligible costs. Such costs are to be documented in the Owner's audited cost certification and approved by the Program Center as capital advance eligible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801.

Project/Activity: Brillion Housing Authority, (WI021), Brillion, WI.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than 9 months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2008.

Reason Waived: The HA requested a waiver of the due date date of September 30, 2008, for the submission of its audited financial data for FYE December 30, 2006. The HA submitted that the audited data was first submitted two days before the due date, but was rejected and not resubmitted on time due to severe illness of the HA's independent public accountant. The circumstances that prevented the HA from resubmitting the audited financial data by the due date were beyond the control of the HA. The waiver allowed the HA additional time to submit its audited financial data to the REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Housing Authority of Starr County, (TX396), Rio Grande City, TX.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the housing authority's (HA) fiscal year end (FYE), and audited financial statements are required to be submitted no later than nine months after the HA's FYE, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 8, 2008.

Reason Waived: The HA requested a waiver for additional time to submit the audited financial data for FYE June 30, 2007 because the Starr County was declared a natural disaster area due to severe flooding. As a result, the HA had to relocate its office and rebuild their data files. The waiver allowed the HA additional time to submit its audited financial data to the Real Estate Assessment Center.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Office of Housing, Department of Housing and Urban Development, 550 12th Street., SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: New Jersey Department of Community Affairs, (NJ912), Trenton, NJ.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing

authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 2008.

Reason Waived: The HA requested a waiver of the audited financial reporting requirements for the FYE ending June 30, 2007. The HA stated that the U.S. Department of Health and Human Services, the cognizant agency for the State of New Jersey, approved a request for an extension in submitting their Single Audit until July 31, 2008. The waiver allowed the HA additional time to submit the audited financial data. The HA is a component unit of the State of New Jersey and should submit its audited financial data no later than July 31, 2008.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Middletown Public Housing Agency, (OH065), Middletown, OH.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the housing authority's (HA) fiscal year end (FYE), and audited financial statements will be required no later than nine months after the HA's FYE, in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 9, 2008.

Reason Waived: The HA requested an extension of time to submit their audited financial data for FYE June 30, 2007. The HA is a Section 8-only-HA that is part of a larger general purpose government, the City of Middletown, Ohio whose FYE is December 31, 2007, and the HA's FYE is June 30, 2007. The HA requested that the FYE be changed to December 31, 2007, so that it would coincide with the FYE of the City. The waiver was granted because the HA followed proper procedures to ensure financial integrity. The HA is to submit its audited financial data for June 30, 2007, no later than September 30, 2008.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Housing Authority of the Town of Haxtun (CO17), Haxton, CO.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing

Date Granted: May 15, 2008.

Reason Waived: The HA requested an extension of time to submit their audited financial data for fiscal year ending (FYE) March 31, 2007. The HA states its audited financial submission was rejected by the REAC and had fifteen days to correct and resubmit the financial data. The HA states corrections were made and the auditor completed both first and second steps of the three-step audited submission process. However, the Executive Director was not able to complete the last submission step due to illness. The waiver was granted because REAC's records confirm that the HA's audited submission was in independent public accountant-agree status indicating the audit was completed and ready to be submitted.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Cincinnati Metropolitan Housing Authority, (OH004), Cincinnati, OH.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 2008.

Reason Waived: The HA states that the audit was completed, however, it was unable to submit it as a result of time-out and availability issues with HUD network servers. Consequently, the submission was not electronically submitted to REAC by the submission due date. The HA received a Late Presumptive Failure (LPF) score of zero. The waiver allowed the HA to resubmit its financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Dallas Housing Authority, (TX009), Dallas, TX.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 16, 2008.

Reason Waived: The HA requested a waiver of its December 31, 2007, audited financial submission due date to procure the services of a new auditor. The HA expressed concerns over the quality of audits conducted by the previous audit firm as a result of recent Office of Inspector General audits. The waiver granted the HA a due date of December 31, 2008, for submission of audited financial data for FYE December 31, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Mishawaka, (IN020), Mishawaka, IN

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and MB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 3, 2008.

Reason Waived: The HA requested a waiver of the audited financial submission date for the fiscal year ending June 30, 2007. The HA contends that its audited financial submission was rejected and the HA was given 15 days to correct and resubmit the financial data. The HA submitted that the corrections were made but due to communication error between the Executive Director and the Auditor, the submission was not electronically made to the REAC by the resubmission due date resulting in the HA receiving a Late Presumptive Failure (LPF) score of zero. The waiver granted the HA allowed the resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Arizona Department of Housing, (AZ901), Phoenix, AZ.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 2008.

Reason Waived: The HA requested additional time to submit its FY2007 audited financial data. Specifically, the HA's original waiver request dated February 28, 2008, was initially denied as a result of the State of Arizona's failure to have an A–133 audit performed by the Single Audit due date. The State of Arizona subsequently received an extension until June 30, 2008, from the cognizant audit agency. The HA was granted the waiver because the circumstances were beyond its control. The HA is to submit its audited financial data no later than July 5, 2008.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Fairfax County Redevelopment and Housing Authority, (VA019), Fairfax, VA.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing Authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing

Date Granted: June 4, 2008.

Reason Waived: The HA requested a waiver of its audited financial submission for the fiscal year ending June 30, 2007. The HA submitted that its audited financial submission was rejected and the HA was given 15 days to correct and resubmit the financial data. The HA submitted that as a result of a communication error with their finance division, the submission was not electronically submitted to the REAC by the resubmission due date resulting in the HA receiving a Late Presumptive Failure (LPF) score of zero. The waiver allowed the HA to resubmit its audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Housing Authority of Snohomish County, (WA039), Everett, WA

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2008.

Reason Waived: The HA requested a waiver of its audited financial submission for the fiscal year ending June 30, 2007. The HA submitted that its audited financial submission was rejected and the HA was given 15 days to correct and resubmit the financial data. The HA submitted that the corrections were made, however, as a result of a communication error with the auditor, the agreed upon procedures were not complete causing the financial submission not to be electronically submitted to the REAC by the resubmission due date. The waiver allowed the HA to resubmit its audited financial statements for FYE June 30, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Alamosa Housing Authority, (CO004), Alamosa, CO.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing Authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2008.

Reason Waived: The HA's original waiver request dated December 12, 2007, was initially granted with a financial submission due date of February 29, 2008, for its FYE March 31, 2007. The HA requested additional time to finalize their audit. The HA submitted that the HA was granted a waiver as a result of investigations conducted by the Inspector General's office. However, the auditors still had not received the needed information from the Inspector General. The HA requested additional time to allow the auditors to finalize the audit. The HA was allowed to submit its audited financial data for FYE March 31, 2007, no later than May 31, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Housing Authority of the City of Ogden, (UT002), Ogden, UT

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing Authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 9, 2008.

Reason Waived: The HA requested a waiver of its audited financial submission due date for FYE June 30, 2007. The HA submitted that its audited financial submission was rejected and the HA was given 15 days to correct and resubmit the financial data. The HA submitted that the corrections were made, however, as a result of a communication error between the HA and the auditor, the financial submission was not electronically submitted to PIH REAC by the resubmission due date and the HA received a Late Presumptive Failure (LPF) score of zero. The HA was granted the waiver of the audited financial submission due date. The HA was allowed to resubmit its audited financial submission for FYE June 30, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Illinois Department of Commerce and Economic Opportunity, (IL911), Chicago, IL.

Nature of Requirement: The regulation at 24 CFR 5.802 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2008.

Reason Waived: The HA requested additional time to submit their audited financial data for fiscal year ending (FYE) June 30, 2007. The HA stated that the U.S. Department of Health and Human Services, the cognizant agency for the State of Illinois, approved a request for an extension in submitting their Single Audit until June 30, 2008. The waiver was granted and the HA was charged with making an invalidation request and including a date of resubmission of its audited financial data that would be no later than July 05, 2008. The waiver allowed the HA additional time to submit its audited financial data to the REAC.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Round Rock Housing Authority, (TX322), Round Rock, TX.

Nature of Requirement: The regulation at 24 CFR 5.801 establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing Authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 13, 2008.

Reason Waived: The HA requested a waiver of its audited financial submission due date for FYE June 30, 2007. The HA submitted that its audited financial submission was rejected and the HA was given 15 days to correct and resubmit the financial data. The HA submitted that as a result of a communication error, the corrections were not made and the submission was not electronically submitted to the REAC by the resubmission due date and the HA received a Late Presumptive Failure (LPF) score of zero. The HA was granted the waiver of its audited financial submission due date. The HA was charged with submitting a request for invalidation of the LPF and including a date of resubmission of its audited financial submission for FYE June 30, 2007.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.20.

Project/Activity: New Albany Housing Authority (IN012), New Albany, IN.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 30, 2008.

Reason Waived: The HA requested a waiver from physical inspections for fiscal year ending March 31, 2008, due to extensive damages caused by a tornado which occurred February 5, 2008. The circumstances surrounding the waiver request were unusual and beyond the HA's control. Accordingly, no physical inspections would be conducted in fiscal year 2008.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.35(a), part 902 Subpart D.

Project/Activity: Housing Authority for the City of Reno, (NV001), Reno, NV.

Nature of Requirement: The referenced regulations establish requirements for (1) financial reporting, (2) annual certification of management operations and (3) resident satisfaction surveys.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 1, 2008.

Reason Waived: The Housing Authority of the City of Reno (HA) requested and was granted a waiver of excess reserves requirement in the calculation of its 2007 Financial Assessment Subsystem (FASS) under the Public Housing Assessment System (PHAS), because it intends to use the excess non-public reserves to expand affordable housing once market conditions improve. The HA also was granted a waiver to have more resources to concentrate on organizational, procedural, and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60 (d) and 24 CFR 902.60 (e).

Project/Activity: Oklahoma City Housing Authority (OK002), Oklahoma, OK.

Nature of Requirement: The referenced regulations establish requirements for (1) annual certification of management operations and (2) resident satisfaction surveys.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 2008.

Reason Waived: The Oklahoma City Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver from the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), from the resident satisfaction survey, for the fiscal year ending September 30, 2007. HUD will carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 941.306(b) and (c).

Project/Activity: Housing Authority of East Baton Rouge Parish (EBRHA) request to waive Total Development Cost (TDC) limit and Housing Construction Costs (HCC) for Phase I of East Boulevard/Oklahoma Street HOPE VI Grant LA48URD003I102.

Nature of Requirement: The regulations at 24 CFR 941.306(b) and (c) require that public housing capital assistance may not be used to pay for housing construction costs and community renewal costs in excess of the HUD determined TDC and HCC limit.

Granted by: Paula O. Blunt, General Assistant Secretary, Public and Indian Housing.

Date Granted: June 10, 2008.

Reason Waived: HUD completed its review of EBRHA's request for a waiver of 24 CFR 941.306(b) and (c) for Phase I of the rental and homeownership development for the East Boulevard/Oklahoma Street HOPE VI project. EBRHA was not able to anticipate the escalating costs associated with construction after Hurricane Katrina and therefore lost the opportunity to apply for a TDC waiver under the PIH Notice in the **Federal Register** of ''Regulatory and Administrative Waivers Granted for Public and Indian Housing Programs to Assist with Recovery and Relief in Hurricanes Katrina, Rita and Wilma Disaster Areas.'' This notice provided the ability for housing authorities impacted by these hurricanes to receive a waiver of TDC. Based upon documentation submitted by EBRHA and recognizing the severe impact Hurricane Katrina had on construction in the Gulf Coast area and in accordance with the authority at 24 CFR 5.110, HUD approved the waiver of 24 CFR 941.306(b) and (c) for Phase I of the East Boulevard/Oklahoma Street HOPE VI project.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610(a)(1)–(a)(7).

Project/Activity: Danville Redevelopment and Housing Authority (DRHA) request to waive HUD review of certain legal documents for the Liberty Square HOPE VI project, Blaine Square (Phase IV) Mixed-Finance Project in Danville, VA.

Nature of Requirement: The regulation at 24 CFR 941.610(a)(1) and (a)(7) require HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released.

Granted by: Paula O. Blunt, General Assistant Secretary, Public and Indian Housing

Date Granted: April 4, 2008.

Reason Waived: Under the waiver, the documents addressed by the regulation no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, DRHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in § 941.610, paragraphs (a)(1)–(a)(7). Granting a waiver of HUD's review allows DRHA to certify to the validity of certain legal documents and streamlines the review process and expedites closing and public housing production.

Additionally, the partners involved with the Blaine Square project are basically the same as those involved in earlier phases of the Liberty Square HOPE VI project. DRHA is the developer and sole lender for the project. Centerline Capital Group was the investor in the previous phase of the Liberty Square project. Clement Wheatley has severed as local counsel on all phases of Liberty Square. Cornerstone Housing, LLC previously served as the developer for all earlier phases of the Liberty Square project. Reno & Cavanaugh has extensive experience with HOPE VI throughout the country and has closed over 100 mixed-finance transactions. Given the parties involved in Blaine Square are the same as with previous phases of the Liberty Square project, the documents used in previous phases will be used in Blaine Square. These were previously approved by HUD. Blaine Square project includes Low Income Housing Tax Credits (LIHTC). The review process and financial control mechanisms associated with LIHTCs are extensive. HUD review would repeat and duplicate the activities which these processes are already performing.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610 (a)(1)–(a)(7).

Project/Activity: Greenville Housing Authority (GHA) request to waive HUD review of certain legal documents for the Jesse Jackson Townhomes HOPE VI project, Clark Street Commons Phase V Mixed-Finance project in Greenville, SC.

Nature of Requirement: The regulation at 24 CFR 941.610(a)(1) and (a)(7) require HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released.

Granted by: Paula O. Blunt, General Assistant Secretary for Public and Indian Housing.

Date Granted: April 8, 2008.

Reason Waived: Under the waiver, the documents addressed by the regulation no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, GHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in § 941.610, paragraphs (a)(1)–(a)(7). Granting a waiver of HUD's review allows GHA to certify to the validity of certain legal documents and streamlines the review process and expedites closing and public housing production.

Additionally, GHA is a housing authority with extensive development and mixed-finance experience. The other development partners in the project are also experienced in public housing mixed-finance development. Clark Street Commons is a mixed-finance transaction, and as such, includes HOPE VI, Low Income Housing

Tax Credits, and private mortgage funds. The review process and financial control mechanisms associated with Low Income Housing Tax Credits are extensive. The private sector mortgage lender also reviews the project's financial and project documents. HUD review would repeat and duplicate the activities which these processes are already performing. Clark Street Commons project is very similar to one of the previous projects, Nichol Town Green Phase IV undertaken by GHA, which underwent full evidentiary document review and approval by HUD. The Developer will be TCG Greenville, LLP, as it was for the Nichol Town Green project. The investor partner, attorneys, and financial advisors will remain the same and Sun America again will provide construction financing.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610 (a)(1)–(a)(7).

Project/Activity: Tacoma Housing Authority (THA) request to waive HUD review of certain legal documents for the HOPE VI Salishan project, Salishan Five Mixed-Finance development.

Nature of Requirement: The regulation at 24 CFR 941.610(a)(1) and (a)(7) require HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released.

Granted by: Paula O. Blunt, General Assistant Secretary, Public and Indian Housing.

Date Granted: April 30, 2008.

Reason Waived: Under the waiver, the documents addressed by the regulation no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, THA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in § 941.610, paragraphs (a)(1)–(a)(7). Granting a waiver of HUD's review allows THA to certify to the validity of certain legal documents and streamlines the review process and expedites closing and public housing production.

Additionally, THA is a high performing housing authority with extensive development and mixed-finance experience. Salishan Five is a near duplicate of Salishan One, Two, Three, and Four. All evidentiary documents for Salishan One and Two were thoroughly reviewed and approved by HUD. Salishan Three and Four both received a waiver of evidentiary review.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• Regulation: 24 CFR 982.306(d).

Project Activity: Aberdeen Housing and Redevelopment Commission (AHRC), Aberdeen, SD. The AHRC requested a waiver regarding renting to relatives under the Housing Choice Voucher (HCV) program so that an applicant with no disabled family members could lease in place.

Nature of Requirement: Section 982.306(d) states that a public housing agency (PHA) must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister or brother of any member of the assisted family unless such approval would provide a reasonable accommodation for a family member who is a person with disabilities.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 9, 2008.

Reason Waived: The waiver was granted because HCV applicant going through a divorce with children attending school in a small community in South Dakota, where the children wished to remain while the applicant was renting a unit from a relative. In addition, there was a very limited supply of rental housing units in this area.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Housing Authority of Washington County (HAWC), Washington County, MD. The HAWC requested a waiver regarding exception payment standards under the Housing Choice Voucher (HCV) program so that it could provide a reasonable accommodation to a person with disabilities.

Nature of Requirements: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 9, 2008.

Reason Waived: The HCV applicant, who is a person with multiple disabilities, was allowed to lease in place in a unit that had been modified with state funds under the Maryland Medicaid Living at Home Waiver Program to meet his needs. To provide a reasonable accommodation so that this applicant would pay no more than 40 percent of adjusted income toward the family share, the HAWC was allowed to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• Regulation: 24 CFR 982.505(c)(3).

Project Activity: San Antonio Housing Authority (SAHA), San Antonio, TX. The SAHA requested a waiver of payment standard (PS) requirements to permit it to implement reduced PSs earlier than required to avoid termination of housing assistance payments (HAP) contracts during calendar year 2008 due to insufficient funding.

Nature of Requirement: Section 982.505(c)(3) states that if the amount on the PS schedule is decreased during the term of the HAP contract, the lower PS amount generally must be used to calculate the monthly HAP for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 20, 2008.

Reason Waived: The waiver was granted because this cost-saving measure would enable the SAHA to both manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• Regulation: 24 CFR 990.185(a).

Project/Activity: New Bedford Housing Authority (NBHA), Massachusetts.

Nature of Requirement: The Energy Policy Act of 2005 amended section 9(e)(2)(C) of the Housing Act of 1937 by changing the contract period from 12 to 20 years, yet HUD's regulation 24 CFR 990.185(a) has not yet been conformed to the statutory period and reflects a maximum period of 12 years.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 22, 2008.

Reason Waived: The NBHA is undertaking an energy project and anticipates energy conservation measures with life cycle expectations and costs that would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). Based upon the anticipated savings and benefits to NBHA and its residents, the waiver granted a longer repayment period, contingent on HUD's provisions, including additional information and technical activity requirements. However, NBHA must comply with all of HUD's provisions for the waiver to be effective.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: Bridgeport Housing Authority (BHA), Bridgeport, CT.

Nature of Requirement: The Energy Policy Act of 2005 amended section 9(e)(2)(C) of the Housing Act of 1937 by changing the contract period from 12 to 20 years, yet HUD's regulation 24 CFR 990.185(a) has not yet been conformed to the statutory period and reflects a maximum period of 12 years.

Granted by: Paula O. Blunt, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 22, 2008.

Reason Waived: BHA is undertaking an energy project and anticipates energy conservation measures with life cycle expectations and costs that would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). Based upon the anticipated savings and benefits to BHA and its residents, the waiver grants a longer repayment period, contingent on HUD's provisions, including additional information and technical activity requirements. However, BHA must comply with all of HUD's provisions for the waiver to be effective.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

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Federal Register

Tuesday,
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Part III

The President

Proclamation 8291—National Farm Safety and Health Week, 2008

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Title 3—

The President

Proclamation 8291

National Farm Safety and Health Week, 2008

By the President of the United States of America

A Proclamation

Agriculture has always been a vital part of America's economy and culture, and our farmers and ranchers are among the best stewards of our land. During National Farm Safety and Health Week, we recognize those working in agriculture for their contributions to our Nation's prosperity, security, and health, and we also seek to raise awareness about the occupational hazards of this industry.

Farming and ranching are strenuous occupations, and workers can be exposed to many dangers, including those associated with extreme weather conditions, operating heavy machinery, and working with livestock. Teaching awareness about potential dangers, implementing preventative measures, and supervising children as they work and play can help mitigate risks and reduce the number of injuries and fatalities on farms and ranches.

Our Nation's farmers and ranchers exemplify the American values of hard work, deep commitment to faith, and love of family. During National Farm Safety and Health Week, we celebrate these extraordinary men and women who are building a prosperous future for our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 21 through September 27, 2008, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to continue to strengthen their commitment to promoting farm safety and health programs. I also urge all Americans to honor our agricultural heritage and to recognize our farmers and ranchers for their remarkable contributions to our Nation.

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

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Presidential Documents

Title 3—

The President

Proclamation 8292

Family Day, 2008

By the President of the United States of America

A Proclamation

Strong families are essential to the well-being of our Nation. On Family Day, we celebrate the relationship between parents and their children, and we recognize the importance of families spending time together.

As a source of hope, guidance, stability, and love for every generation, families both teach and exemplify the values and virtues needed in today's changing world. As parents and as role models to America's children, we can help prepare our children for a bright future by offering steadfast support and unconditional love.

The character of a child is formed in his or her earliest years by the love and guidance of family members and other caring individuals. Since 2001, my Administration has worked to strengthen the American family, and we have worked with faith-based and community organizations to promote healthy marriages and responsible fatherhood. By striving to ensure that children remain connected to their families, communities, places of worship, and schools, we are helping them make good choices and build lives of purpose.

Parents are the primary teachers of our Nation's youth, and they are the first ones to educate them about the differences between right and wrong. By being proactive and involved in a child's life, families pass along the traditions and principles that help make America a compassionate, decent, and hopeful society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 22, 2008, as Family Day. I call upon the people of the United States to observe this day by engaging in activities that strengthen the bonds between children and parents.

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

[FR Doc. E8–22511
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 6456/P.L. 110–321

To provide for extensions of certain authorities of the

Department of State, and for other purposes. (Sept. 19, 2008; 122 Stat. 3535)

S. 2450/P.L. 110–322

To amend the Federal Rules of Evidence to address the waiver of the attorney-client privilege and the work product doctrine. (Sept. 19, 2008; 122 Stat. 3537)

H.R. 5683/P.L. 110–323

Government Accountability Office Act of 2008 (Sept. 22, 2008; 122 Stat. 3539)

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