



# Federal Register

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

RIN 3150-AH76

[NRC-2007-0003]

### Industry Codes and Standards; Amended Requirements; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is correcting a final rule that appeared in the **Federal Register** on September 10, 2008 (73 FR 52729). The final rule amended NRC's regulations to incorporate by reference the 2004 Edition of Section III, Division 1, and Section XI, Division 1, of the American Society of mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), and the 2004 Edition of the ASME Code for Operation and maintenance of Nuclear Power plants (OM Code) to provide updated rules for constructing and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. The final rule also incorporated by reference ASME Code Cases N-722 and N-729-1.

**DATES:** Effective October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1423, e-mail [Mark.Padovan@nrc.gov](mailto:Mark.Padovan@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In FR doc. E8-20624 appearing on page 52729 in the **Federal Register** of Wednesday, September 10, 2008, the following corrections are made:

■ 1. On page 52734, in the center column, third complete paragraph, fifth line from the bottom, remove the words

“or impracticality must be shown under 10 CFR 50.55a(g)(6)(i).”

#### § 50.55a [Corrected]

■ 2. On page 52749, in the center column, in § 50.55a(g)(6)(ii)(D)(1), line 7, remove “[insert final date of rule]” and add in its place “September 10, 2008”.

■ 3. On page 52749, in the center column, in § 50.55a(g)(6)(ii)(D)(4), “50.55a(g)(6)(ii)(D)(3)(i)” is corrected to read “§ 50.55a(g)(6)(ii)(D)(4)(i),” and “50.55a(g)(6)(ii)(D)(3)(iv)” is corrected to read “§ 50.55a(g)(6)(ii)(D)(4)(iv)”.

Dated at Rockville, Maryland, this 26th day of September 2008.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. E8-23237 Filed 10-1-08; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 33

[Docket No. FAA-2007-28501; Amendment No. 33-27]

RIN 2120-AJ05

### Airworthiness Standards; Aircraft Engine Standards for Pressurized Engine Static Parts; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects the amendment number to a final rule published in the **Federal Register** of Thursday, September 25, 2008, regarding requirements for pressurized engine static parts.

**DATES:** This amendment becomes effective November 24, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tim Mouzakis, Engine and Propeller Directorate Standards Staff, ANE-111, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (781) 238-7114, fax (781) 238-7199, e-mail [timoleon.mouzakis@faa.gov](mailto:timoleon.mouzakis@faa.gov).

## Correction

■ In final rule Aircraft Engine Standards for Pressurized Engine Static Parts beginning on page 55435 in the **Federal Register** issue of Thursday, September 25, 2008, (73 FR 55435) make the following correction.

■ 1. On page 55435, in the first column, beginning on the fourth line of the heading, “Amendment No. 33-26” is corrected to read “Amendment No. 33-27.”

Issued in Washington, DC on September 26, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8-23140 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 190

### Interpretative Statement Regarding Funds Related to Cleared-Only Contracts Determined To Be Included in a Customer's Net Equity

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Interpretative statement.

**SUMMARY:** This interpretation by the Commodity Futures Trading Commission (“Commission”) is issued to clarify the appropriate treatment under the commodity broker provisions of the Bankruptcy Code and Part 190 of the Commission's Regulations of claims arising from contracts (“cleared-only contracts”) that, although not executed or traded on a Designated Contract Market or a Derivatives Transaction Execution Facility, are subsequently submitted for clearing through a Futures Commission Merchant (“FCM”) to a Derivatives Clearing Organization (“DCO”).

**FOR FURTHER INFORMATION CONTACT:** Robert B. Wasserman, Associate Director, [rwasserman@cftc.gov](mailto:rwasserman@cftc.gov), (202) 418-5092, or Amanda Olear, Attorney-Advisor, Division of Clearing and Intermediary Oversight, [aolear@cftc.gov](mailto:aolear@cftc.gov), (202) 418-5283, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Section 20 of the Commodity Exchange Act<sup>1</sup> (Act) empowers the Commission to provide how the net equity of a customer is to be determined:

the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property; \* \* \* and (5) how the net equity of a customer is to be determined.

Subchapter IV of Chapter 7 of the Bankruptcy Code, governing commodity brokers, has the same effect, explicitly basing the definition of “net equity” on “such rules and regulations as the Commission promulgates under the Act.”<sup>2</sup>

The Commission has exercised this power in promulgating Part 190 of its regulations.<sup>3</sup> In particular, the term “net equity” is defined by Commission Regulation 190.07<sup>4</sup> as:

the total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor.

Therefore, the determination of whether claims relating to cleared-only contracts in Section 4d accounts are properly includable within the meaning of “net equity” is dependent upon whether an entity holding such claims is properly considered a “customer.” This, in turn, as discussed below, requires an analysis of whether such claims are derived from “commodity contracts.”

#### Cleared-Only Transactions as Commodity Contracts

Commission Regulation 190.01(k) defines “customer” through incorporation by reference of the definition of the term appearing in Section 761(9) of the Bankruptcy Code, which provides, in relevant part:

(9) “Customer” means—

(A) With respect to a futures commission merchant—

(i) Entity for or with whom such futures commission merchant deals and holds a claim against such futures commission merchant on account of a *commodity contract* made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant’s business as a futures commission merchant from or for the commodity futures account of such entity; or

(ii) Entity that holds a claim against such futures commission merchant arising out of—

(I) The making, liquidation, or change in the value of a *commodity contract* of a kind specified in clause (i) of this subparagraph;

(II) A deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a *commodity contract*; or

(III) The making or taking of delivery on such a *commodity contract*.<sup>5</sup>

Therefore, for an entity to be considered a “customer” of an FCM, such entity’s claim must arise out of a “commodity contract.”<sup>6</sup>

A “commodity contract,” as the term appears within the context of Section 761(9), is defined in Section 761(4) of the Bankruptcy Code, which states, in pertinent part:

(4) “Commodity contract” means—

(A) With respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade[.]<sup>7</sup>

This definition contains two elements: (1) The nature of the contract; and (2) the nature of the venue whose rules govern the contract.

With regard to the first element, over-the-counter contracts that are cleared-only contracts are contracts for the purchase or sale of a commodity for future delivery within the meaning of this section of the Bankruptcy Code. When cleared, they are subject to performance bond requirements, daily variation settlement, the potential for offset, and final settlement procedures that are substantially similar, and often identical, to those applicable to exchange-traded products at the same clearinghouse. *Cf.* 11 U.S.C. 761(4)(F). Although the creation and trading of these products is outside the Commission’s jurisdiction, the clearing of these products by FCMs and DCOs is within the Commission’s jurisdiction.

With regard to the second element, Section 761(7) of the Bankruptcy Code states that a “‘contract market’ means a registered entity,” and Section 761(8), in turn, provides that a “‘registered entity’ \* \* \* ha[s] the meaning[] assigned to [that] term[] in the [Commodity Exchange] Act.”<sup>8</sup> Section 1a(29)(C) of the Act defines the term “registered entity” as including “a derivatives clearing organization registered under section 5b” of the Act.<sup>9</sup>

Thus, when a contract is cleared through a DCO, such a contract would be considered a “commodity contract”

under Section 761(4) of the Bankruptcy Code.<sup>10</sup> Therefore, an entity with a claim based on a cleared-only contract would be a “customer” within the meaning of Section 761 of the Bankruptcy Code. Further, because Part 190 of the Commission’s Regulations defines “customer” as having the meaning set forth in Section 761, such entity with a claim based on a cleared-only contract would also be a “customer” for the purposes of Part 190 of the Commission’s Regulations. Based on the foregoing, such claims arising out of cleared-only contracts are properly included within the meaning of “net equity” for the purposes of Subchapter IV of the Bankruptcy Code and Part 190 of the Commission’s Regulations.

#### Portfolio Performance Bond as Net Equity

There is an alternative path to reach the same conclusion. In cases where cleared-only contracts are held in a commodity futures account at an FCM and margined as a portfolio with exchange-traded futures (*i.e.*, where the Commission has issued an order pursuant to Section 4d(a)(2) of the Commodity Exchange Act), assets margining that portfolio are likely to be includable within “net equity” even if cleared-only contracts were found not to be “commodity contracts” within the meaning of the Bankruptcy Code and Part 190 of the Commission’s Regulations.

Where the assets in an entity’s account margin (*i.e.*, collateralize) both cleared-only contracts and exchange-traded futures, the entirety of those assets serves as performance bond for each of the exchange-traded futures and the cleared-only contracts. Therefore, (a) a claim for those assets constitutes a claim “on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant’s business as a futures commission merchant from or for the commodity futures account of such entity;”<sup>11</sup> (b) the entity qualifies as a “customer” within the meaning of the Bankruptcy Code as a result of that claim; and (c) those margin assets are properly included within that entity’s net equity.

The dynamics of futures trading render it unwise to distinguish between

<sup>5</sup> 11 U.S.C. 761(9) (emphasis added).

<sup>6</sup> A similar analysis would apply to a customer of a clearing organization (*i.e.*, a clearing member).

<sup>7</sup> 11 U.S.C. 761(4).

<sup>8</sup> 11 U.S.C. 761(7) and (8).

<sup>9</sup> 7 U.S.C. 1a(29)(C).

<sup>10</sup> *Cf.* H.R. REP. NO. 109–31(I) (2005) (emphasizing distinction between definitions for purposes of Bankruptcy Code and for purposes of other statutes).

<sup>11</sup> Section 761(9)(A) of the Bankruptcy Code provides that an entity holding such a claim is a “customer.” 11 U.S.C. 761(9)(A).

<sup>1</sup> 7 U.S.C. 24.

<sup>2</sup> 11 U.S.C. 761(17).

<sup>3</sup> 17 CFR Part 190.

<sup>4</sup> 17 CFR 190.07.

an account that *currently* is portfolio margined and one that was at one time or is intended to be so in the future. Indeed, Subchapter IV of the Bankruptcy Code includes as customers entities with certain claims arising out of property that is not currently margining a commodity contract. Specifically, Section 761(9)(A)(ii) provides that an entity can qualify as a “customer” based on claims arising out of any of the following: (I) The “liquidation, or change in the value of a commodity contract;” (II) a deposit of property “for the purpose of making or margining \* \* \* a commodity contract;” or (III) “the making or taking of delivery of a commodity contract.” Accordingly, there is no requirement that the customer’s assets be margining commodity contracts on the day that the bankruptcy petition is filed. Therefore, all assets contained in such an account are properly included within the customer’s net equity.

#### Account Classes

Part 190 of the Commission’s Regulations divides accounts into several classes, specifically: Futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, and delivery accounts.<sup>12</sup>

In October 2004, the Commission issued an interpretation regarding the appropriate account class for funds attributable to contracts traded on non-domestic boards of trade, and the assets margining such contracts, that are included in accounts segregated in accordance with Section 4d of the Act pursuant to Commission Order.<sup>13</sup> In that context, the Commission concluded that the claim is properly against the Section 4d account class because customers whose assets are deposited in such an account pursuant to Commission Order should benefit from that pool of assets. The same rationale supports the Commission’s conclusion that a claim arising out of a cleared-only contract, or the property margining such a contract, would be includable in the futures account class where, pursuant to Commission Order, the contract or property is included in an account segregated in accordance with Section 4d of the Act.

<sup>12</sup> See 17 CFR 190.01.

<sup>13</sup> See Interpretative Statement Regarding Funds Determined To Be Held in the Futures Account Type of Customer Account Class, 69 FR 69510 (Nov. 30, 2004).

Issued in Washington, DC, on September 26, 2008, by the Commodity Futures Trading Commission.

**David Stawick,**  
*Secretary of the Commission.*

#### Concurrence of Commission Michael V. Dunn CBOT Request for an Order Under Section 4d of the Commodity Exchange Act Related to the Clearing of OTC Ethanol Products

I concur with granting 4d relief to the Chicago Board of Trade (CBOT) related to the clearing of OTC ethanol products while reserving judgment as to whether the Commission in the future should revisit the determination as to whether ethanol should be considered an agricultural commodity.

Ethanol markets clearly impact agricultural markets as we all realize. Even though I recognize that arguments can be made that ethanol is an energy commodity because it is primarily used as a source of energy, I don’t think that should necessarily be the deciding factor.

Ethanol is clearly an important part of our agricultural economy. At some point, I think we may need to reconsider carefully whether ethanol should be considered an agricultural commodity so that it would be subject to the highest level of Commission jurisdiction rather than the lesser jurisdiction that attends energy commodities.

Despite this, I believe the order should be approved because the conditions attending the 4d order will bring greater transparency and accountability to the CBOT’s ethanol swaps market than currently exist.

[FR Doc. E8–23277 Filed 10–1–08; 8:45 am]

BILLING CODE 6351–01–P

#### SECURITIES AND EXCHANGE COMMISSION

##### 17 CFR Part 229

[Release Nos. 33–8961; 34–58656]

#### Technical Amendment to Item 407 of Regulation S–K

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is making a technical amendment to Item 407 of Regulation S–K. The technical amendment updates a reference to Independence Standards Board Standard No. 1 (“ISB No. 1”), which was previously adopted by the Public Company Accounting Oversight Board (“PCAOB”) as an interim standard but has been superseded by the PCAOB’s newly adopted Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence*. The

reference is being updated to refer to the “applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence.”

**DATES:** *Effective Date:* September 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Melanie Jacobsen, Special Counsel, at 202–551–5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

We are amending Item 407 of Regulation S–K<sup>1</sup> to update a reference as a result of the adoption of a new Public Company Accounting Oversight Board (“PCAOB”) rule. Item 407 is being amended to update the following reference:

*Old Reference:*  
“Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as adopted by the Public Company Accounting Oversight Board in Rule 3600T”

*New Reference:*  
“applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence”

Independence Standards Board Standard No. 1 (“ISB No. 1”) was part of the interim standards previously adopted by the PCAOB on April 16, 2003.<sup>2</sup> It required an auditor annually to discuss with the audit committee its independence and to provide written disclosures of all relationships between the auditor and the company that may reasonably be thought to bear on independence and a letter confirming the auditor’s independence.<sup>3</sup>

Effective on September 30, 2008, PCAOB Rule 3526 supersedes ISB No. 1 regarding the annual discussion and disclosure the auditor must make to the audit committee.<sup>4</sup> Rule 3526 was adopted by the PCAOB on April 22,

<sup>1</sup> 17 CFR 229.407.

<sup>2</sup> PCAOB Rule 3600T.

<sup>3</sup> ISB No. 1.

<sup>4</sup> Rule 3526 also superseded ISB Interpretation 00–1, *The Applicability of ISB Standard No. 1 When “Secondary Auditors” are Involved in the Audit of a Registrant*, and ISB Interpretation 00–2, *The Applicability of ISB Standard No. 1 When “Secondary Auditors” are Involved in the Audit of a Registrant, An Amendment of Interpretation 00–1*.

2008 and approved by the Commission on August 22, 2008.

Under existing Item 407 of Regulation S–K, an issuer’s audit committee must state that it has received from the independent accountants the written disclosures and letter required by ISB No. 1. As revised, Item 407 requires the audit committee to state that it has received the disclosure and letter required by the applicable PCAOB requirements for independent accountant communications with audit committees concerning auditor independence because ISB No. 1 has been superseded by PCAOB Rule 3526. To avoid the need to update a specific reference in the future if subsequently changed, we are revising the reference in Item 407 Regulation S–K so that it refers to the written disclosures and the letter from the independent accountants required by “applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence.”

We are not revising Item 407 of Regulation S–B in the same manner as we are revising Item 407 of Regulation S–K due to amendments that we made in December 2007 to expand the number of smaller reporting companies that qualify for our scaled disclosure requirements under the Securities Act and the Securities Exchange Act of 1934.<sup>5</sup> To streamline and simplify regulation, the amendments moved the scaled disclosure requirements from Regulation S–B into Regulation S–K. While Regulation S–B will remain in effect for transition purposes until March 15, 2009, it will be removed from the Code of Federal Regulations in its entirety after that date. We therefore are not revising Regulation S–B, but we intend to interpret existing Regulation S–B Item 407 consistently with the technical changes that we are making to the comparable Regulation S–K item. Accordingly, we expect companies complying with Regulation S–B after the effective date of these amendments, but before March 15, 2009, to follow the applicable PCAOB requirements for independent accountant auditor independence.

## II. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public

interest.<sup>6</sup> The amendment to Item 407 of Regulation S–K is a technical change to update an outdated reference. Because no one is likely to want to comment on such a non-substantive, technical amendment, the Commission finds that it is unnecessary to publish notice of this amendment.<sup>7</sup>

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.<sup>8</sup> Due to the need to coordinate the effectiveness of the amendment with the effective date of the PCAOB’s new Rule 3526 (which is to take effect on September 30, 2008) and for the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on September 30, 2008.

## III. Consideration of Competitive Effects of Amendment

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>9</sup> Because this amendment merely makes technical changes to update references to applicable PCAOB requirements, we do not anticipate any competitive advantages or disadvantages would be created.

## IV. Statutory Authority and Text of Amendments

We are adopting this technical amendment under the authority set forth in Section 19(a) of the Securities Act<sup>10</sup> and Section 23(a) of the Exchange Act.<sup>11</sup>

### List of Subjects in 17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

<sup>5</sup> 5 U.S.C. 553(b).

<sup>7</sup> For similar reasons, the amendment does not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>8</sup> See 5 U.S.C. 553(d)(3).

<sup>9</sup> 15 U.S.C. 78w(a)(2).

<sup>10</sup> 15 U.S.C. 77s(a).

<sup>11</sup> 15 U.S.C. 78w(a).

## Text of Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of the Federal Regulations is amended as follows:

### PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80(a)–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 229.407 is amended by revising paragraph (d)(3)(i)(C) to read as follows:

#### § 229.407 (Item 407) Corporate governance.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \*

(C) The audit committee has received the written disclosures and the letter from the independent accountant required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence, and has discussed with the independent accountant the independent accountant’s independence; and

\* \* \* \* \*

By the Commission.

Dated: September 26, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–23057 Filed 9–30–08; 11:15 am]

**BILLING CODE 8011–01–P**

<sup>5</sup> 15 U.S.C. 78a *et seq.*

**DEPARTMENT OF JUSTICE****Bureau of Alcohol, Tobacco, Firearms, and Explosives****27 CFR Parts 447, 478, 479, and 555**

[Docket No. ATF 11F; AG Order No. 3006–2008]

RIN 1140–AA32

**Technical Amendments to Regulations in Title 27, Chapter II (2006R–6P)****AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.**ACTION:** Final rule.

**SUMMARY:** This final rule makes technical amendments and corrects typographical errors in parts 447, 478, 479, and 555 of title 27, Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout these regulations.

**DATES:** This rule is effective October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth A. Gillis, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE., Washington, DC 20226; telephone (202) 648–7093.

**SUPPLEMENTARY INFORMATION:****Background**

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) administers regulations published in title 27, chapter II, Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the *Federal Register* during the preceding year. ATF identified several amendments that are needed to provide clarity and uniformity to the regulations it administers in 27 CFR.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27, chapter II.

The following sections are being amended to reflect the current control numbers issued by the Office of Management and Budget (OMB): Sections 447.32–447.34, 447.42, 447.45, 447.57, 478.25a, 478.39a–478.40a, 478.44, 478.45, 478.52, 478.92, 478.94–478.96, 478.102, 478.112–478.114, 478.119–478.124, 478.125–478.126a, 478.131–478.133, 478.150, 479.102, 479.131, 555.109, 555.121–555.124, 555.184, and 555.201.

The following sections are being amended to replace “Chief, National

Licensing Center” with “Chief, Federal Firearms Licensing Center”: Sections 478.11, 478.41, 478.45, 478.47, 478.48, 478.52–478.54, 478.56, 478.57, 478.60, 478.95, and 478.127.

Sections 447.35 and 447.58 are being amended to reflect ATF’s current Web site address.

The following sections are being amended to reflect the current address for ATF’s Distribution Center and Out-of-Business Records Center: Sections 478.21, 478.124, 478.127, 479.21, 555.21, 555.23, and 555.128.

Section 447.32 is being amended to reflect the current address for registration refunds regarding the importation of articles enumerated on the U.S. Munitions Import List.

Sections 478.25a and 478.39a are being amended to reflect current telephone numbers.

Sections 478.44, 478.45, and 478.47 are being amended to remove all references to obsolete forms.

Sections 478.44 and 478.95 are being amended to reflect a nomenclature change.

Section 478.96 is being amended to correct a typographical error.

Section 478.125(f) is being amended to remove a repetitive sentence.

Sections 478.151 and 555.109 are being amended to include the control numbers approved by OMB.

Section 555.181 is being amended to remove the OMB control number, since the collection of information in this section no longer applies.

**How This Document Complies With the Federal Administrative Requirements for Rulemaking****A. Executive Order 12866**

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

**B. Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications

to warrant the preparation of a federalism summary impact statement.

**C. Executive Order 12988**

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**D. Administrative Procedure Act**

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, and practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. See 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3). Moreover, the Department finds good cause for exempting the rule from those requirements. Because this final rule merely makes technical corrections to improve the clarity of the regulations, the Department finds it unnecessary to publish this rule for public notice and comment. Similarly, because delaying the effective date of this rule would serve no purpose, the Department also finds good cause to make this rule effective upon publication.

**E. Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

**F. Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**G. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### H. Paperwork Reduction Act of 1995

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### I. Congressional Review Act

This action pertains to agency organization, procedure, or practice, and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### Drafting Information

The author of this document is Elizabeth Gillis; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

#### List of Subjects

##### 27 CFR Part 447

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegation, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting and recordkeeping requirements, Scientific equipment, Seizures and forfeitures.

##### 27 CFR Part 478

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Domestic violence, Exports, Imports, Law enforcement personnel, Military personnel, Nonimmigrant aliens, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

##### 27 CFR Part 479

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

##### 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

### Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR parts 447, 478, 479, and 555 are amended as follows:

#### PART 447—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

■ 1. The authority citation for 27 CFR Part 447 continues to read as follows:

**Authority:** 22 U.S.C. 2778.

■ 2. Section 447.32 is amended by removing "Washington, DC 20226," in paragraph (c) and adding in its place "Martinsburg, WV 25405," and by removing "1512-0021" in the parenthetical text at the end of the section and adding in its place "1140-0009".

■ 3. Section 447.33 is amended by removing "1512-0021" in the parenthetical text at the end of the section and adding in its place "1140-0009".

■ 4. Section 447.34 is amended by removing "1512-0387" in the parenthetical text at the end of the section and adding in its place "1140-0032".

■ 5. Section 447.35(b) is amended by removing "<http://www.atf.treas.gov/>" and adding in its place "<http://www.atf.gov/>".

■ 6. Section 447.42 is amended by removing "1512-0017" in the parenthetical text at the end of the section and adding in its place "1140-0005".

■ 7. Section 447.45 is amended by removing "1512-0019" in the parenthetical text at the end of the section and adding in its place "1140-0007".

■ 8. Section 447.57 is amended by removing "1512-0017" in the parenthetical text at the end of the section and adding in its place "1140-0005".

■ 9. Section 447.58 is amended by removing "<http://www.atf.treas.gov/>" and adding in its place "<http://www.atf.gov/>".

#### PART 478—COMMERCE IN FIREARMS AND AMMUNITION

■ 10. The authority citation for 27 CFR Part 478 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921-930; 44 U.S.C. 3504(h).

■ 11. Section 478.11 is amended by removing the term "Chief, National Licensing Center" and adding in its place "Chief, Federal Firearms Licensing Center (FFLC)".

■ 12. Section 478.21(b) is amended by removing "7943 Angus Court, Springfield, Virginia 22153" and adding in its place "7664 K Fullerton Road, Springfield, Virginia 22150".

■ 13. Section 478.25a is amended by removing "1-800-788-7132" in the last sentence and adding in its place "1-800-788-7133", and by removing "1512-0387" in the parenthetical text at the end of the section and adding in its place "1140-0032".

■ 14. Section 478.39a is amended by removing "1-800-800-3855" in the second sentence and adding in its place "1-888-930-9275", and by removing "1512-0524" in the parenthetical text at the end of the section and adding in its place "1140-0039".

■ 15. Section 478.40 is amended by removing "1512-0526" in the parenthetical text at the end of the section and adding in its place "1140-0041".

■ 16. Section 478.40a is amended by removing "1512-0526" in the parenthetical text at the end of the section and adding in its place "1140-0041".

■ 17. Section 478.41 is amended by removing "Chief, National Licensing Center" in the first sentence of paragraph (b) and adding in its place "Chief, Federal Firearms Licensing Center", and by removing "National Licensing Center" in the first sentence of paragraph (c) and adding in its place "Federal Firearms Licensing Center".

■ 18. Section 478.44 is amended by adding the word "and" at the end of paragraph (a)(1)(iii); by removing paragraph (a)(1)(iv); by redesignating paragraph (a)(1)(v) as paragraph (a)(1)(iv); by revising newly redesignated paragraph (a)(1)(iv); by revising paragraph (a)(2); by revising the last two sentences in paragraph (b); and by removing "1512-0570" in the parenthetical text at the end of the section and adding in its place "1140-0060", to read as follows:

#### § 478.44 Original license.

(a)(1) \* \* \*

(iv) Include the appropriate fee in the form of money order or check made payable to the "Bureau of Alcohol, Tobacco, Firearms, and Explosives".

(2) ATF Form 7 may be obtained by contacting the ATF Distribution Center (See § 478.21).

(b) \* \* \* The application shall include the appropriate fee in the form of a money order or check made payable to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. ATF Form 7CR (Curios and Relics) may be

obtained by contacting the ATF Distribution Center (See § 478.21).

\* \* \* \* \*

■ 19. Section 478.45 is revised to read as follows:

**§ 478.45 Renewal of license.**

If a licensee intends to continue the business or activity described on a license issued under this part during any portion of the ensuing year, the licensee shall, unless otherwise notified in writing by the Chief, Federal Firearms Licensing Center, execute and file with ATF prior to the expiration of the license an application for a license renewal, ATF Form 8 Part II, in accordance with the instructions on the form, and the required fee. If the applicant is a nonimmigrant alien, the application must include applicable documentation demonstrating that the nonimmigrant alien falls within an exception to or has obtained a waiver from the nonimmigrant alien provision (e.g., a hunting license or permit lawfully issued in the United States; waiver). The Chief, Federal Firearms Licensing Center may, in writing, require the applicant for license renewal to also file completed ATF Form 7 or ATF Form 7CR in the manner required by § 478.44. In the event the licensee does not timely file an ATF Form 8 Part II, the licensee must file an ATF Form 7 or ATF Form 7CR as required by § 478.44, and obtain the required license before continuing business or collecting activity. If an ATF Form 8 Part II is not timely received through the mails, the licensee should so notify the Chief, Federal Firearms Licensing Center.

(Approved by the Office of Management and Budget under control number 1140-0060).

■ 20. Section 478.47 is amended by adding the word “and” at the end of paragraph (b)(4); by removing “; and” at the end of paragraph (b)(5) and adding in its place a period; by removing paragraph (b)(6); by removing “Chief, National Licensing Center” each place it appears in the section and adding in its place “Chief, Federal Firearms Licensing Center”; and by removing the parenthetical text at the end of the section.

■ 21. Section 478.48 is amended by removing “Chief, National Licensing Center” each place it appears and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 22. Section 478.52 is amended by removing “Chief, National Licensing Center” each place it appears and adding in its place “Chief, Federal Firearms Licensing Center”, and by removing “1512-0525” in the

parenthetical text at the end of the section and adding in its place “1140-0040”.

■ 23. Section 478.53 is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 24. Section 478.54 is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 25. Section 478.56(b) is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 26. Section 478.57(a) is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 27. Section 478.60 is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 28. Section 478.92 is amended by removing “1512-0550” in the parenthetical text at the end of the section and adding in its place “1140-0050”.

■ 29. Section 478.94 is amended by removing “1512-0387” in the parenthetical text at the end of the section and adding in its place “1140-0032”.

■ 30. Section 478.95 is amended by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”; by removing “Bureau of Alcohol, Tobacco and Firearms” and adding in its place “Bureau of Alcohol, Tobacco, Firearms, and Explosives”; and by removing “1512-0387” in the parenthetical text at the end of the section and adding in its place “1140-0032”.

■ 31. Section 478.96 is amended by removing “§ 478.424” at the end of the first sentence in paragraph (b) and adding in its place “§ 478.124”, and by removing “1512-0130” in the parenthetical text at the end of the section and adding in its place “1140-0021”.

■ 32. Section 478.102 is amended by removing “1512-0544” in the parenthetical text at the end of the section and adding in its place “1140-0045”.

■ 33. Section 478.112 is amended by removing “1512-0017” and “1512-0019” in the parenthetical text at the end of the section and adding in their place “1140-0005” and “1140-0007”, respectively.

■ 34. Section 478.113 is amended by removing “1512-0017” and “1512-0019” in the parenthetical text at the

end of the section and adding in their place “1140-0005” and “1140-0007”, respectively.

■ 35. Section 478.113a is amended by removing “1512-0017” and “1512-0019” in the parenthetical text at the end of the section and adding in their place “1140-0005” and “1140-0007”, respectively.

■ 36. Section 478.114 is amended by removing “1512-0018” and “1512-0019” in the parenthetical text at the end of the section and adding in their place “1140-0006” and “1140-0007”, respectively.

■ 37. Section 478.119 is amended by removing “1512-0017”, “1512-0018”, and “1512-0019” in the parenthetical text at the end of the section and adding in their place “1140-0005”, “1140-0006”, and “1140-0007”, respectively.

■ 38. Section 478.120 is amended by removing “1512-0570” in the parenthetical text at the end of the section and adding in its place “1140-0060”.

■ 39. Section 478.121 is amended by removing “1512-0129” and “1512-0387” in the parenthetical text at the end of the section and adding in their place “1140-0020” and “1140-0032”, respectively.

■ 40. Section 478.122 is amended by removing “1512-0387” in the parenthetical text at the end of the section and adding in its place “1140-0032”.

■ 41. Section 478.123 is amended by removing “1512-0369” in the parenthetical text at the end of the section and adding in its place “1140-0067”.

■ 42. Section 478.124 is amended by removing “Center, 7943 Angus Court, Springfield, Virginia 22153” in paragraph (i) and adding in its place “Center (See § 478.21)”, and by revising the parenthetical text at the end of the section to read as follows:

**§ 478.124 Firearms transaction record.**

\* \* \* \* \*

(Paragraph (c) approved by the Office of Management and Budget under control numbers 1140-0045, 1140-0020, and 1140-0060; paragraph (f) approved by the Office of Management and Budget under control number 1140-0021; all other recordkeeping approved by the Office of Management and Budget under control number 1140-0020)

■ 43. Section 478.125 is amended by removing the eighth sentence in the introductory text of paragraph (f), and by removing “1512-0387” in the parenthetical text at the end of the

section and adding in its place “1140–0032”.

■ 44. Section 478.125a is amended by removing “1512–0387” in the parenthetical text at the end of the section and adding in its place “1140–0032”.

■ 45. Section 478.126 is amended by removing “1512–0387” in the parenthetical text at the end of the section and adding in its place “1140–0032”.

■ 46. Section 478.126a is amended by removing “1512–0006” in the parenthetical text at the end of the section and adding in its place “1140–0003”.

■ 47. Section 478.127 is amended by removing “Spring Mills Office Park, 2029 Stonewall Jackson Drive, Falling Waters, West Virginia 25419” in the second sentence and adding in its place “244 Needy Road, Martinsburg, West Virginia 25405”, and by removing “Chief, National Licensing Center” and adding in its place “Chief, Federal Firearms Licensing Center”.

■ 48. Section 478.131 is amended by removing “1512–0544” in the parenthetical text at the end of the section and adding in its place “1140–0045”.

■ 49. Section 478.132 is amended by removing “1512–0526” in the parenthetical text at the end of the section and adding in its place “1140–0041”.

■ 50. Section 478.133 is amended by removing “1512–0526” in the parenthetical text at the end of the section and adding in its place “1140–0041”.

■ 51. Section 478.150 is amended by removing “1512–0544” in the parenthetical text at the end of the section and adding in its place “1140–0045”.

■ 52. Section 478.151 is amended by adding a parenthetical text at the end of the section to read as follows:

**§ 478.151 Semiautomatic rifles or shotguns for testing or experimentation.**

\* \* \* \* \*

(Paragraph (b) approved by the Office of Management and Budget under control number 1140–0037)

**PART 479—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS**

■ 53. The authority citation for 27 CFR Part 479 continues to read as follows:

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

■ 54. Section 479.21(b) is amended by removing “7943 Angus Court,

Springfield, Virginia 22153” and adding in its place “7664 K Fullerton Road, Springfield, Virginia 22150”.

■ 55. Section 479.102 is amended by removing “1512–0550” in the parenthetical text at the end of the section and adding in its place “1140–0050”.

■ 56. Section 479.131 is amended by removing “1512–0387” in the parenthetical text at the end of the section and adding in its place “1140–0032”.

**PART 555—COMMERCE IN EXPLOSIVES**

■ 57. The authority citation for 27 CFR Part 555 continues to read as follows:

**Authority:** 18 U.S.C. 847.

■ 58. Section 555.21(b) is amended by removing “7943 Angus Court, Springfield, Virginia 22153” and adding in its place “7664 K Fullerton Road, Springfield, Virginia 22150”.

■ 59. Section 555.23 is amended by removing “Center, 7943 Angus Court, Springfield, Virginia, 22153” and adding in its place “Center (See § 555.21)”.

■ 60. Section 555.109 is amended by removing the parenthetical text at the end of the section and adding in its place “(Approved by the Office of Management and Budget under control numbers 1140–0055 and 1140–0062)”.

■ 61. Section 555.121 is amended by removing “1512–0373” in the parenthetical text at the end of the section and adding in its place “1140–0030”.

■ 62. Section 555.122 is amended by removing “1512–0373” in the parenthetical text at the end of the section and adding in its place “1140–0030”.

■ 63. Section 555.123 is amended by removing “1512–0373” in the parenthetical text at the end of the section and adding in its place “1140–0030”.

■ 64. Section 555.124 is amended by removing “1512–0373” in the parenthetical text at the end of the section and adding in its place “1140–0030”.

■ 65. Section 555.128 is amended by removing “Spring Mills Office Park, 882 T.J. Jackson Drive, Falling Waters, West Virginia 25419” in the second sentence and adding in its place “244 Needy Road, Martinsburg, West Virginia 25405”.

■ 66. Section 555.181 is amended by removing the parenthetical text at the end of section.

■ 67. Section 555.184 is amended by removing “1512–0539” in the parenthetical text at the end of the section and adding in its place “1140–0042”.

■ 68. Section 555.201 is amended by removing “1512–0536” in the parenthetical text at the end of the section and adding in its place “1140–0071”.

Dated: September 26, 2008.

**Michael B. Mukasey,**  
*Attorney General.*

[FR Doc. E8–23178 Filed 10–1–08; 8:45 am]  
BILLING CODE 4410–FY–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2008–0738]

RIN 1625–AA08

**Special Local Regulations for Marine Events; Wrightsville Channel, Wrightsville Beach, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing Temporary special local regulations for the swim portions of “Beach 2 Battleship Full and Half Iron Distance Triathlon”, to be held on the waters of Banks Channel, adjacent to Wrightsville Beach, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in Wrightsville Channel during the swimming portion of this event.

**DATES:** This rule is effective from 6 a.m. to 11 a.m. on November 1, 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–2008–0738 and are available online at [www.regulations.gov](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 Fifth Coast Guard District, Prevention Division, 431 Crawford Street, Room 416, Portsmouth, VA 23704 between 10

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 Christopher D. Humphrey, Coast Guard Sector North Carolina, Atlantic Beach, NC (252) 247-4571. 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 August 18, 2008, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Wrightsville Channel, Wrightsville Beach, NC in the **Federal Register** (73 FR 48160). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

##### **Background and Purpose**

On November 1, 2008, the Wilmington YMCA will sponsor the "Beach 2 Battleship Full and Half Iron Distance Triathlon" on the waters of Banks Channel including the waters of Wrightsville Channel adjacent to Wrightsville Beach, North Carolina. The swim portion of the event will consist of two groups of 500 swimmers entering Banks Channel southwest of the Coast Guard Station and swimming northeast along Wrightsville Channel and Motts Channel to Seapath Marina. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

##### **Discussion of Comments and Changes**

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Wrightsville Channel, Wrightsville Beach, NC.

##### **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 prevents traffic from transiting a portion of Wrightsville Channel and Motts Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast, area newspapers, local radio and television stations so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

##### **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. The rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of Wrightsville Channel, Motts Channel and Banks Channel from 6 a.m. to 11 a.m. on November 1, 2008. This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the regulated area will apply to the Wrightsville Channel, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the

enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

##### **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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, 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)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–0738 to read as follows:

#### § 100.35–T05–0738 Wrightsville Channel, Wrightsville Beach, NC.

(a) *Regulated area.* The regulated area is established for the waters of Banks Channel, adjacent to Wrightsville Beach, NC, from the southern tip of Wrightsville Beach approximate position latitude 34°11'15" N, longitude 077°48'51" W, thence northeast to Seapath Marina, Wrightsville Beach, NC, approximate position latitude 34°12'45" N, longitude 077°48'27" W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who have been designated by the Commander, Coast Guard Sector North Carolina.

(2) Official Patrol means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) Participant includes all swimmers and support vessels participating in the "Beach 2 BattleShip Full and Half Iron Distance Triathlon" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(iv) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Enforcement Period.* This section will be enforced from 6 a.m. to 11 a.m. on November 1, 2008.

Dated: September 25, 2008.

**Neil O. Buschman,**

*Captain, U.S. Coast Guard Commander, Fifth Coast Guard District Acting*

[FR Doc. E8–23188 Filed 10–1–08; 8:45 am]

**BILLING CODE 4910–15–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 110

[Docket No. USCG–2008–0076]

RIN 1625–AA01

#### Anchorage Regulations; Yarmouth, ME, Casco Bay; Correction

**AGENCY:** Coast Guard, DHS.

**ACTION:** Correcting amendments.

**SUMMARY:** The Coast Guard published a final rule in the **Federal Register** on March 12, 2008 (73 FR 13125), creating three special anchorage areas in Yarmouth, Maine. That rule contained

imprecise coordinates. With this document the Coast Guard is correcting the coordinates of the boundaries to the three Yarmouth special anchorages listed in 33 CFR 110.5, in response to more detailed information received from the National Ocean Service (NOS). These changes will not affect the locations or the size of the anchorages.

**DATES:** This correction is effective November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. John J. Mauro, First Coast Guard District Prevention and Waterways, (617) 223-8355, E-mail: [John.J.Mauro@uscg.mil](mailto:John.J.Mauro@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 12, 2008, we published a final rule entitled Anchorage Regulations; Yarmouth, ME, Casco Bay in the **Federal Register** (73 FR 13125) establishing three Special Anchorage areas in Yarmouth, Maine, Casco Bay. However, NOS notified the Coast Guard that the geographic coordinates for Madeleine and Sandy Point Special Anchorage and Drinkwater Point and Princes Point Special Anchorages used in the NPRM and final rules created a boundary that did not entirely enclose the anchorage areas. NOS is able to plot very precise coordinates, and determined that the published coordinates allowed a "gap" of a few yards in the boundaries of these anchorages. The Coast Guard has reviewed the updated coordinates and graphics sent by NOS and agrees with NOS's assessment. We have issued this correction with the updated coordinates for the boundaries according to NOS's assessment. We will notify mariners of this correction via the Local Notice to Mariners once this rule appears in the **Federal Register**.

**Need for Correction**

As published, the final rule contains errors that need to be clarified. The boundaries of an anchorage area should completely enclose the area, without any gaps that could create confusion when represented on a chart.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard corrects 33 CFR part 110 by making the following correcting amendments:

**PART 110—ANCHORAGE REGULATIONS**

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.5 paragraph (f) to read as follows:

**§ 110.5 Casco Bay, Maine.**

\* \* \* \* \*

(f) Yarmouth Harbor and adjacent waters—(1) Littlejohn Island/Doyle Point Cousins Island Special Anchorage. All of the waters enclosed by a line connecting the following points: Starting from the northernmost point of Littlejohn Island at latitude 43°45'51.6" N, longitude 70°06'57.0" W; thence to latitude 43°45'46.8" N, longitude 70°06'53.4" W; thence to latitude 43°45'25.8" N, longitude 70°07'22.8" W; thence to latitude 43°45'16.8" N, longitude 70°07'40.8" W; thence to latitude 43°44'57.0" N, longitude 70°08'27.0" W; thence to latitude 43°44'59.9" N, longitude 70°08'30.0" W. DATUM: NAD 83.

(2) Madeleine and Sandy Point Special Anchorage. All of the waters enclosed by a line connecting the following points: Starting from a point northeast of Birch Point on Cousins Island at latitude 43°45'15.1" N, longitude 70°09'16.8" W; thence to latitude 43°45'21.0" N, longitude 70°09'30.0" W; thence to latitude 43°45'37.8" N, longitude 70°09'10.8" W; thence to latitude 43°45'57.0" N, longitude 70°08'58.8" W; thence to latitude 43°46'01.3" N, longitude 70°08'45.0" W. DATUM: NAD 83.

(3) Drinkwater Point and Princes Point Special Anchorage. All of the waters enclosed by a line connecting the following points: Starting south of Drinkwater Point in Yarmouth, Maine at latitude 43°46'26.8" N, longitude 70°09'17.0" W; thence to latitude 43°46'21.0" N, longitude 70°09'09.6" W; thence to latitude 43°46'04.2" N, longitude 70°09'46.2" W; thence to latitude 43°45'28.8" N, longitude 70°10'24.0" W; thence to latitude 43°45'43.2" N, longitude 70°10'24.0" W. DATUM: NAD 83.

**Note to paragraph (f).** An ordinance of the Town of Yarmouth, Maine requires the approval of the Yarmouth Harbor Master for the location and type of moorings placed in these special anchorage areas. All anchoring in the areas are under the supervision of the Yarmouth Harbor Master or other such authority as may be designated by the authorities of the Town of Yarmouth, Maine. All moorings are to be so placed that no moored vessel will extend beyond the limit of the anchorage area.

Dated: September 16, 2008.

**Liam J. Slein,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. E8-23200 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-15-P**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1228**

[FDMS Docket NARA-07-0004]

RIN 3095-AB43

**Federal Records Management; Media Neutral Schedules**

**AGENCY:** National Archives and Records Administration.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations, which were published in the **Federal Register** of Thursday, November 15, 2007 (72 FR 64155). The regulations allowed agencies to make new Federal records schedules and certain existing approved records schedules applicable to series of records regardless of the medium in which the records are created and maintained.

**DATES:** October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Laura McCarthy at 301-837-1640.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction made new Federal records schedules media neutral unless otherwise specified and allowed schedules previously approved for hard copy records to be applied to electronic versions of the files if certain conditions are met. The regulation applies to all Federal agencies, including the National Archives and Records Administration (NARA).

**Need for Correction**

As published, the final regulations contain an error in § 1228.24(b)(3); the paragraph requires an effective date and not the instruction to use the effective date of the rule.

**List of Subjects in 36 CFR Part 1228**

Archives and records.

■ Accordingly, 36 CFR part 1228 is corrected by making the following correcting amendment:

**PART 1228—DISPOSITION OF FEDERAL RECORDS**

■ 1. The authority citation for part 1228 continues to read as follows:

**Authority:** 44 U.S.C. chs. 21, 29, and 33.

■ 2. In § 1228.24, revise paragraph (b)(3) to read as follows:

**§ 1228.24 Formulation of agency records schedules.**

\* \* \* \* \*

(b) \* \* \*

(3) Records schedules submitted to NARA for approval on or after December 17, 2007, are media neutral, i.e., the disposition instructions apply to the described records in all media, unless the schedule identifies a specific medium for a specific series.

\* \* \* \* \*

Dated: September 25, 2008.

**Adrienne C. Thomas,**

*Deputy Archivist of the United States.*

[FR Doc. E8-23379 Filed 10-1-08; 8:45 am]

**BILLING CODE 7515-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2007-1100; FRL-8723-9]

**Approval and Promulgation of Air Quality Implementation Plans; Ohio; Removal of Vehicle Inspection and Maintenance Programs for Cincinnati and Dayton**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio which allows the State to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas, also known as the E-Check program. The revision specifically requests that the E-Check program regulations be moved from the active control measures portion of the SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield ozone maintenance plans. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on April 4, 2005, and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. EPA is approving Ohio's request because the State has demonstrated that discontinuing the I/M program in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) and the fine particulate NAAQS or with the

attainment and maintenance of other air quality standards.

**DATES:** This final rule is effective on November 3, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2007-1100. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Francisco J. Acevedo at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What is our response to comments received on the notice of proposed rulemaking?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is the background for this action?**

The Cincinnati-Hamilton and Dayton-Springfield areas were required to implement "basic" I/M programs under section 182(b)(4) of the Clean Air Act (CAA) because they were originally designated as moderate 1-hour ozone nonattainment areas. In order to maximize nitrogen oxides (NO<sub>x</sub>), volatile organic compound (VOC), and carbon monoxide (CO) emissions reductions from the I/M program, Ohio EPA chose to implement an "enhanced" program in those areas and incorporated an on-board diagnostic (OBD) component into the programs. EPA fully approved Ohio's I/M programs on April 4, 1995 (60 FR 16989). The E-Check programs began operation on January 2,

1996, to meet nonattainment area requirements for the ozone NAAQS effective at the time.<sup>1</sup> The Cincinnati ozone nonattainment area also includes three counties (Boone, Campbell, and Kenton Counties) in northern Kentucky.

Both the Cincinnati-Hamilton area and the Dayton-Springfield area have since been redesignated to attainment with respect to the 1-hour ozone NAAQS. The Cincinnati-Hamilton area was redesignated to attainment of the 1-hour ozone NAAQS on June 21, 2005 (70 FR 35946). The Dayton-Springfield area was redesignated to attainment of the 1-hour ozone NAAQS on May 5, 1995 (60 FR 22289). On August 13, 2007 (72 FR 45169), EPA approved the redesignation of the Dayton-Springfield area to attainment with respect to the 8-hour ozone NAAQS.

EPA approved maintenance plans for each of these areas in connection with these redesignations. These approved maintenance plans show that control measures in place in these areas are sufficient for overall emissions to remain beneath the attainment level of emissions until the end of the maintenance period. In both cases, the conformity budget in the maintenance plans reflects mobile source emissions without E-Check, and the maintenance plans demonstrate that the applicable standard will continue to be met without E-Check. In accordance with the CAA and EPA redesignation guidance, states are free to adjust control strategies in the maintenance plan as long as they can satisfy section 110(l). With such a demonstration of non-interference with attainment or other applicable requirements, control programs may be discontinued and removed from the SIP.

Ohio EPA submitted a revision to the Cincinnati-Hamilton and Dayton-Springfield portions of the Ohio SIP on April 4, 2005, and supplemented it on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008. This revision requested that the Ohio I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas be moved from the active control measures portion of the ozone SIP to the contingency measures portion of the Cincinnati-Hamilton and Dayton-Springfield Maintenance Plans.

As part of its submittal, Ohio EPA demonstrated continued maintenance of the 1-hour ozone standard without taking credit for reductions from the Cincinnati-Hamilton E-Check program,

<sup>1</sup> Although the E-Check program began on January 1, 1996, there was a vehicle I/M program operating in the Cincinnati-Hamilton area prior to that date, and prior to November 15, 1990.

and continued maintenance of the 1-hour and 8-hour ozone standards without taking credit for reductions from the Dayton-Springfield E-Check program.

In addition, Ohio adopted several measures to assure that the discontinuation of E-Check, which occurred starting January 1, 2006, does not interfere with timely attainment of the ozone air quality standard. All the replacement measures are currently in effect and establish obligatory requirements applicable to affected groups.

The various measures adopted by Ohio to reduce VOC emissions include a rule requiring use of lower emitting solvents in cold cleaner degreasers, a rule requiring the use of more efficient paint application techniques for auto refinishing, and a rule requiring that portable fuel containers be designed for less volatilization and fuel spillage. EPA approved these rules on March 30, 2007 (72 FR 15045).

Ohio also adopted a rule requiring use of low volatility gasoline in the Cincinnati-Hamilton and Dayton-Springfield areas. EPA approved Ohio's low vapor pressure gasoline rule on May 25, 2007 (72 FR 29269). Because of a delay in the implementation of Ohio's low vapor pressure gasoline program in 2006, Ohio adopted a further rule to provide the necessary reductions in 2006 and help compensate for the discontinuation of Ohio's E-Check program. This rule retired 240 allowances from the new source set aside for the "NO<sub>x</sub> SIP Call" trading program and EPA approved this rule on February 13, 2008 (73 FR 8197).

EPA concludes that the combination of discontinuing E-Check and use of low volatility gasoline and the other control measures Ohio adopted will result in total emissions levels which will not interfere with attainment of the ozone standard. In addition, EPA believes that discontinuation of E-Check will clearly not interfere with the fine particulate NAAQS or with the attainment and maintenance of other air quality standards.

## II. What is our response to comments received on the notice of proposed rulemaking?

The notice proposing to approve Ohio's request to discontinue operation of the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas was published in the **Federal Register** on July 24, 2008, and the public comment period for this notice closed on August 25, 2008. EPA received comments from two parties on the proposal. The first set of comments were

sent by the Regional Air Pollution Control Agency of Dayton, Ohio fully supporting the proposal, and the second set of comments were from representatives of the Environmental Committee of the Ohio Utility Institute representing Buckeye Power, Inc., Columbus Southern Power Company, Dayton Power & Light Company, Duke Energy Ohio, Ohio Power Company, and Ohio Valley Electric Corporation. The utility comments do not contain objections to EPA's proposed approval of the shutdown request per se, but instead object to the statement that the retirement of 240 allowances from the utility oxides of nitrogen trading program helped in temporarily compensating for emission increases resulting from I/M discontinuation. The utilities reiterated objections raised during the approval process of an earlier EPA action approving the retirement of the 240 allowances, a notice that was approved by EPA on February 13, 2008 (73 FR 8197), and has been formally challenged by the utilities. Because EPA addressed these comments in this earlier rulemaking and the issues relating to the merits of the allowance rulemaking are currently being addressed through a separate petition for review process, and the utilities are not directly objecting to the merits of the I/M program shutdown, EPA is not elaborating further on its response to these comments.

## III. What action is EPA taking?

EPA is approving Ohio's demonstration that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

As noted in the proposed notice, the Cincinnati area is currently designated nonattainment for ozone but is not classified. Pursuant to a decision of the Court of Appeals for the District of Columbia Circuit in the case of *South Coast Air Quality Management Dist. v. EPA* (472 F.3d 882 (D.C. Cir. 2006)), EPA will be reevaluating the classification of ozone nonattainment areas that were formerly classified as "basic" for the .08 parts per million (ppm) standard. One possible outcome could be the reestablishment of a requirement for I/M for the Cincinnati

area.<sup>2</sup> However, for the reasons stated in the proposed notice, EPA believes that Ohio has satisfied currently applicable criteria for discontinuing I/M in the Cincinnati and Dayton areas.

## IV. Statutory and Executive Order Reviews

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

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

<sup>2</sup> Because the Dayton area is designated attainment for the 0.08 ppm 8-hour ozone standard, EPA's future classification rule for that standard would not apply to that area.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 1, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Volatile organic compounds.

Dated: September 24, 2008.

**Walter W. Kovalick Jr.**,

*Acting Regional Administrator, Region 5.*

■ 40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart KK—Ohio

■ 2. Section 52.1885 is amended by adding paragraph (gg) to read as follows:

#### § 52.1885 Control strategy: Ozone.

\* \* \* \* \*

(gg) Approval—EPA is approving requests submitted by the State of Ohio on April 4, 2005, and supplemented on May 20, 2005, February 14, 2006, May 9, 2006, October 6, 2006, and February 19, 2008, to discontinue the vehicle inspection and maintenance (I/M) program in the Cincinnati-Hamilton and Dayton-Springfield areas. The submittal also includes Ohio's demonstration that eliminating the I/M programs in the Cincinnati-Hamilton and Dayton-Springfield areas will not interfere with the attainment and maintenance of the ozone NAAQS and the fine particulate NAAQS and with the attainment and maintenance of other air quality standards and requirements of the CAA. We are further approving Ohio's request to modify the SIP such that I/M is no longer an active program in these areas and is instead a contingency measure in these areas' maintenance plans.

[FR Doc. E8-23245 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 80

[EPA-HQ-OAR-2005-0161; FRL-8723-3]

RIN 2060-AO80

#### Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amendments to the Renewable Fuel Standard program requirements. Following publication of the final rule promulgating the Renewable Fuel Standard regulations, EPA discovered a number of technical errors and areas within the regulations that could benefit from clarification or modification. This direct final rule amends the regulations to make the appropriate corrections, clarifications and modifications.

**DATES:** This direct final rule is effective on December 1, 2008 without further notice, unless EPA receives adverse comment by November 3, 2008. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0161, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **E-mail:** [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Air and Radiation Docket ID No. EPA-HQ-OAR-2005-0161.

- **Mail:** Air and Radiation Docket, Docket No. EPA-HQ-OAR-2005-0161, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.

- **Hand Delivery:** EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Air and Radiation Docket, ID No. EPA-HQ-OAR-2005-0161. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0161. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Megan Brachtl, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343-9473; fax number:

(202) 343-2802; e-mail address: [brachtl.megan@epa.gov](mailto:brachtl.megan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA Using a Direct Final Rule?**

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

This rule will be effective on December 1, 2008 without further notice except to the extent we receive adverse comment by November 3, 2008. If EPA

receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment was received will not take effect. Any distinct amendment, paragraph, or section of today’s rule for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of this rule. We will address all public comments in any subsequent final rule based on the proposed rule.

**II. Does This Action Apply to Me?**

Entities potentially affected by this action include those involved with the production, distribution and sale of gasoline motor fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

| Category       | NAICS codes <sup>a</sup> | SIC codes <sup>b</sup> | Examples of potentially regulated parties              |
|----------------|--------------------------|------------------------|--|
| Industry ..... | 324110                   | 2911                   | Petroleum refiners, importers.                         |
| Industry ..... | 325193                   | 2869                   | Ethyl alcohol manufacturers.                           |
| Industry ..... | 325199                   | 2869                   | Other basic organic chemical manufacturers.            |
| Industry ..... | 424690                   | 5169                   | Chemical and allied products merchant wholesalers.     |
| Industry ..... | 424710                   | 5171                   | Petroleum bulk stations and terminals.                 |
| Industry ..... | 424720                   | 5172                   | Petroleum and petroleum products merchant wholesalers. |
| Industry ..... | 454319                   | 5989                   | Other fuel dealers.                                    |

<sup>a</sup> North American Industry Classification System (NAICS).

<sup>b</sup> Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

**III. What Should I Consider as I Prepare My Comments for EPA?**

**A. Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**B. Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

**C. Docket Copying Costs.** You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

**IV. Renewable Fuel Standard Program Amendments**

Following publication of the final Renewable Fuel Standard (RFS) program regulations (72 FR 23900, May 1, 2007), EPA discovered a number of areas within the RFS regulations at 40

CFR Part 80, Subpart K that were in error, were unclear, or otherwise could benefit from modification. We have attempted to clarify some ambiguities in our Question and Answer document for the RFS program.<sup>1</sup> However, in some cases we believe it is appropriate to modify the regulations. As a result, we

are making the following amendments to the RFS regulations in Subpart K.

#### A. Summary of Amendments

Below is a table listing the provisions that we are amending. Many of the amendments address grammatical or typographical errors, or provide minor clarifications. A few amendments are

being made in order to assist regulated entities in complying with the RFS program requirements and to lessen regulatory requirements where possible without compromising the goals of the RFS program. We have provided additional explanation for several of these amendments in sections IV.B through IV.H below.

### RFS PROGRAM AMENDMENTS

| Section  | Description  |
|--|--|
| 80.1101(d)(2) .....                                      | Corrected typographical error.   |
| 80.1101(d)(3) .....                                      | Clarified that no more than 5 volume percent denaturant may be included in the volume of ethanol produced, imported or exported for purposes of determining compliance with the requirements under this subpart. See Section IV.B.   |
| 80.1107(c) .....   | Clarified that the gasoline products to be included in an obligated party's Renewable Volume Obligation (RVO) calculation should not be double-counted.  |
| 80.1126(a)(1) .....                                      | Clarified that this provision pertains to Renewable Identification Number (RIN) generation, not RIN transfers.   |
| 80.1126(b) .....   | Clarified that renewable fuel producers that are below the 10,000 gallon threshold are exempt from the attest engagement requirements in 80.1164 as well as other reporting and recordkeeping requirements.  |
| 80.1126(d)(1) .....                                      | Clarified that the RIN that must be generated for each batch of renewable fuel that is produced or imported is a "batch-RIN."  |
| 80.1127(b)(2) .....                                      | Corrected typographical error in deficit carryover equation.   |
| 80.1128(a)(5)(ii) and (iii); removed (a)(5)(iv) and (v). | Revised this paragraph to allow parties to use an equivalence value of 2.5 RINs per gallon for any renewable fuel for purposes of calculating the end-of-quarter check. See Section IV.C.  |
| 80.1128(a)(6); removed (a)(7).                           | Deleted. Based on experience with the program to date, we believe this requirement is not necessary to fulfill the goals of the program. See Section IV.D. (§ 80.1128(a) has also been renumbered to adjust for this change.)  |
| 80.1129(b)(1) and (b)(8) .....                           | Revised to clarify that a party with a small refinery or small refiner exemption may only separate RINs that have been assigned to a volume of renewable fuel that the party blends into motor vehicle fuel.   |
| 80.1129(b)(2) .....                                      | Revised to clarify that up to 2.5 gallon-RINs may be separated when a volume of renewable fuel is blended into gasoline.   |
| 80.1129(b)(4) .....                                      | Revised to allow any party to separate the RINs from renewable fuel that it produces or markets for use in motor vehicles in neat form, or uses in motor vehicles in neat form. An oversight in the current regulations only allows this for renewable fuel producers and importers.   |
| 80.1129(b)(6) .....                                      | Revised to provide that this provision applies only to neat fuel for which an obligated party generates RINs. See Section IV.E.  |
| 80.1129(d) .....   | Revised to delete the requirement that a separated RIN may not be transferred on a product transfer document that is used to transfer a volume of renewable fuel, since it will be clear from other information required on the product transfer document whether or not any assigned RINs have also been transferred with the fuel.   |
| 80.1131(a)(8); removed (b)(4).                           | Moved the text in paragraph (b)(4) to a new paragraph (a)(8) in order to clarify that a RIN that is transferred to two or more parties is considered an invalid RIN.   |
| 80.1132(a), (b) and (c) .....                            | Revised to clarify that the requirements in § 80.1132 apply to fuel that has been disposed of as well as fuel that has been spilled. See Section IV.F.   |
| 80.1141(a)(1), 80.1142(a)(1)                             | Amended to clarify that a refinery with an approved small refinery exemption or a refiner with a small refiner exemption is exempt from requirements that apply to obligated parties during the period of time that the small refinery or small refiner exemption is in effect.  |
| 80.1141(a)(1) .....                                      | Corrected calendar year reference.   |
| 80.1141(a)(4), 80.1142(a)(4)                             | Revised to clarify that the small refinery and small refiner exemptions only apply to refineries or refiners that process crude oil, or feedstocks derived from crude oil, through refinery processing units.  |
| 80.1141(b)(2)(ii) .....                                  | Revised in order to clarify that small refinery status can be transferred with the sale of a refinery. Section 80.1141(b)(2)(ii) currently requires the owner of a small refinery to submit a letter stating that the company owned the refinery as of the applicable date for eligibility for small refinery status. This provision has been revised to require the letter only to state that the refinery was small as of the applicable date. Thus, any refinery that qualifies for small refinery status retains its status even if the refinery is sold to another company. |
| 80.1142(e) .....   | Revised to clarify that a refiner who is disqualified as a small refiner must notify EPA in writing no later than 20 days following the disqualifying event.   |
| 80.1151(a)(3)(i), (b)(4)(i) and (d)(3)(i).               | Deleted requirement to retain records of "expired RINs," since it is apparent when a RIN has expired from the date of the RIN and information regarding expired RINs is not required to be reported to EPA. See Section IV.G.  |
| 80.1152(c)(1)(iii) and (v), (c)(2).                      | Deleted requirement to report "expired RINs," since it will be apparent when a RIN has expired from other information provided in the reports. Paragraph (c)(2) has also been renumbered. See Section IV.G.  |
| 80.1153(a)(5) .....                                      | Deleted provisions relating to the submission of transaction and quarterly gallon-RIN reports on a facility-by-facility basis, since RIN trading activities are conducted on a company basis.  |
| 80.1153(a)(5) .....                                      | Revised to clarify the language required to be included on product transfer documents for transfers of fuel with no assigned RINs.   |
| 80.1154(a)(4) and (b) .....                              | Revised to clarify that producers who produce less than 10,000 gallons of renewable fuel per year are exempt from the attest engagement requirements as well as the other recordkeeping and reporting requirements.  |
| 80.1160(a), (b)(1), and (f) .....                        | Revised to clarify specific acts that are prohibited under the RFS program.  |

<sup>1</sup> See "Questions and Answers on the Renewable Fuel Standard Program" at <http://www.epa.gov/otaq/renewablefuels/index.htm#comp>.

## RFS PROGRAM AMENDMENTS—Continued

| Section                      | Description  |
|------------------------------|--|
| 80.1164 .....                | Revised to clarify the attest engagement requirements, and, where possible, to modify the requirements to make them less burdensome. See Section IV.H. |
| 80.1165, 80.1166, 80.1167 .. | Corrected typographical errors.  |

*B. Amount of Denaturant in Ethanol*

Section 80.1101(d)(3) specifies that ethanol must contain a denaturant to be covered by the definition of “renewable fuel” under the RFS rule. For purposes of compliance with the RFS, a volume of ethanol includes the volume of denaturant contained in the ethanol. Under § 80.1107(d), renewable fuel, including denatured ethanol, is excluded from the volume of gasoline produced or imported for purposes of calculating an obligated party’s RVO. Under § 80.1130, any denatured ethanol that is exported is included in the volume of renewable fuel exported for purposes of calculating the exporter’s RVO. However, the regulations do not specify a maximum limit on the amount of denaturant that may be included in the volume of ethanol produced, imported or exported for purposes of these compliance calculations and other requirements under the RFS rule.

In promulgating the RFS regulations, we assumed that the amount of denaturant included in a volume of ethanol normally would not exceed the industry maximum specification under ASTM D–4806, which is 5 percent. Since the rule was published, it has come to our attention that larger amounts of gasoline are sometimes used in ethanol as a denaturant. We believe it is appropriate to limit the amount of gasoline in ethanol that may be counted as a denaturant to an amount that reflects the ASTM specification. As indicated above, under the current regulations, any volume of gasoline contained in ethanol as a denaturant is excluded from an obligated party’s volume of gasoline produced or imported for purposes of calculating the party’s RVO. As a result, an obligated party is not prohibited from adding large amounts of gasoline to imported ethanol to avoid including the gasoline in its RVO calculation, and, at the same time, increase the volume of renewable fuel for which RINs could be generated. Therefore, we are amending the RFS regulations to specify a limit of 5 volume percent denaturant that may be included in a volume of ethanol for purposes of determining compliance with requirements under the RFS rule.

*C. Equivalence Values for End-of-Quarter Check*

Section 80.1128(a)(5) provides that any party who owns assigned RINs must demonstrate that the sum of all assigned gallon-RINs that the party owns at the end of a quarter does not exceed the sum of all volumes of renewable fuel the party owns at the end of the quarter multiplied by their respective equivalence values. Section 80.1128(a)(4) allows a party to transfer to another party up to 2.5 assigned RINs per gallon of any renewable fuel. Therefore, in some cases, a party could receive fuel with more assigned RINs than would be calculated for that volume of fuel using its equivalence value. As a result, the party could be out of compliance with the end-of-quarter check requirement in § 80.1128(a)(5), unless the party had enough fuel to sell with the excess RINs by the end of the quarter. For example, a marketer that receives a gallon of biodiesel with 2.5 assigned gallon-RINs must calculate compliance with § 80.1128(a)(5) based on the equivalence value of the biodiesel, which is 1.5. If this were the marketer’s only transaction, the marketer would be out of compliance at the end of the quarter since he would have an excess of 1.0 assigned gallon-RINs. To remedy this situation, we are amending § 80.1128(a)(5) to allow an equivalence value of 2.5 to be used for any volume of renewable fuel for purposes of calculating compliance with the end-of-quarter check requirement in § 80.1128(a)(5).

*D. RIN Transfer Requirements for Producers and Importers*

The RFS program allows any party that receives assigned RINs with renewable fuel to thereafter transfer anywhere from zero to 2.5 gallon-RINs with each gallon of renewable fuel. This provision provides the flexibility to transfer more assigned RINs with some volumes and fewer assigned RINs with other volumes depending on the business circumstances of the transaction and the number of RINs that the seller has available.

However, this level of flexibility could contribute to short-term hoarding on the part of producers and importers of renewable fuel. As a result, we

implemented a provision at § 80.1128(a)(6) that requires producers and importers to transfer assigned gallon-RINs with gallons such that the ratio of assigned gallon-RINs to gallons is equal to the equivalence value for the renewable fuel. In effect, this requires renewable fuel producers and importers to transfer every single batch of renewable fuel with all assigned RINs generated for that batch. We have interpreted this provision as applying only to producers and importers who only sell renewable fuel that they produce or import themselves. It does not apply to producers or importers that are also marketers of renewable fuel produced or imported by another party.

Since the start of the RFS program, there have been numerous circumstances in which parties who purchase renewable fuel from a producer or importer wanted to avoid the registration, recordkeeping and reporting requirements of the program. To do this, they had to avoid taking ownership of RINs. In some cases the producer or importer has accommodated such parties by taking ownership of renewable fuel from another party, thereby becoming a marketer who is not subject to § 80.1128(a)(6). However, this has not always been possible, and in such cases the purchaser has been forced to seek out alternative sources of renewable fuel. This latter outcome is inconsistent with one of our goals for the RFS program—structuring the program so it would have only a minimal effect on common business practices.

After further consideration, we do not believe that producers and importers of renewable fuel should be required to transfer all RINs generated with every batch of renewable fuel that is produced. Instead, we believe that it should be sufficient that they comply with the end-of-quarter check in § 80.1128(a)(5) and the restriction in that section on the number of gallon-RINs that can be transferred with each gallon. This change recognizes that most producers and importers can already avoid the limitations of § 80.1128(a)(6) by buying a small quantity of renewable fuel from another party and thereby becoming a marketer. The change would also have minimal impact on the transfer of RINs with volume, as

producers and importers would be limited in the number of RINs they could hold onto given the end-of-quarter check. As a result, we are amending the regulations to delete the provisions contained in § 80.1128(a)(6).

#### *E. RINs That an Obligated Party Generates*

Section 80.1129(b)(1) provides that an obligated party must separate any RINs that have been assigned to a volume of renewable fuel that the obligated party owns. An exception to this requirement is provided in § 80.1129(b)(6) for obligated parties who also generate RINs. Under this provision, an obligated party who generates RINs may separate such RINs from volumes of renewable fuel only up to the level of gallon-RINs of the party's RVO. The limitation in § 80.1129(b)(6) was included in the regulations to prevent a renewable fuel producer from importing a small amount of gasoline, which would qualify the producer as an obligated party, in order to separate the RINs from all of the renewable fuel that the party produced.

It has come to our attention that the limitation in § 80.1129(b)(6) may be problematic in situations where a party imports gasoline that contains renewable fuel. Under § 80.1126(d), RINs must be generated for any renewable fuel that is imported, including any renewable fuel contained in imported gasoline. For example, if a party imports 100 gallons of E10, the party would be required to generate RINs for the volume of ethanol in the E10, which would be 10 gallon-RINs. The party also would calculate its RVO based on the applicable RFS standard, which for 2008 is 7.76%. The standard as applied to the gasoline part of the volume of imported E10 in the example would result in an RVO of 6.98 gallon-RINs ( $7.76\% \times 90$  gallons). Since the party would be able to separate RINs only up to the party's RVO, or 6.98 gallon-RINs, the party would have 3.02 assigned gallon-RINs which could not be separated. Under § 80.1128(a)(5), each party that owns assigned RINs must demonstrate that the party does not own more assigned gallon-RINs at the end of each quarter than the amount of renewable fuel in the party's inventory, multiplied by its equivalence value. In the example above, the party would own 3.02 assigned gallon-RINs at the end of the quarter, but would not have any renewable fuel in its inventory. As a result, the party would not be in compliance with the requirement in § 80.1128(a)(5).

To address this situation, this rule modifies the regulations to apply the

limitation in § 80.1129(b)(6) only to neat renewable fuel for which the party generates RINs and not to renewable fuel already blended in gasoline. Thus, in the example above, the party would generate 10 gallon-RINs for the ethanol contained in the E10 and the party's RVO would be 6.98 gallon-RINs, but the party would be able to separate all of the 10 gallon-RINs from the fuel. The party then would have no assigned RINs at the end of the quarter and would not be in violation of the requirement in § 80.1128(a)(5). If the party in our example imported 100 gallons of non-ethanol gasoline and 10 gallons of neat renewable fuel, the party would generate 10 gallon-RINs, but could only separate RINs up to the party's RVO, which be 7.76 gallon-RINs ( $7.76\% \times 100$  gallons). As a result, the party would have 2.24 assigned gallon-RINs left, but would also have 10 gallons of renewable fuel in its inventory, and, therefore, the party would be in compliance with the requirement in § 80.1128(a)(5).

#### *F. Renewable Fuel That Has Been Disposed Of*

Under § 80.1132, in the event of a spillage of renewable fuel that is required by a Federal, State or local authority to be reported, the owner of the renewable fuel must retire an appropriate number of gallon-RINs. Since the RFS rule was promulgated, it has come to our attention that disposal of renewable fuel may also be required to be reported to a government authority. We believe it is appropriate to treat such disposals of renewable fuel in the same manner as spillages of renewable fuel, since in both situations the fuel will not ultimately be used in motor vehicle fuel. As a result, § 80.1132 has been amended to apply to reportable disposals of renewable fuel as well as reportable spillages of renewable fuel.

#### *G. Elimination Of Expired RIN Category*

Under § 80.1127(a)(3), RINs may only be used to demonstrate compliance with the RVO for the calendar year in which they were generated or the following year. Therefore, after two years, RINs have no value and are deemed to have expired. The regulations currently require information regarding expired RINs to be retained and included in the reports submitted to EPA. However, since EPA will know from the information contained in the RIN when the RIN was generated, EPA will also know when the RIN has expired. Therefore, we have determined that the requirements to retain records of expired RINs and to include information regarding expired RINs in the reports

submitted to EPA are unnecessary, and, as a result, we are amending the regulations to eliminate the requirements to retain records and report information regarding expired RINs.

#### *H. Attest Engagements*

This rule makes several revisions to the attest engagement provisions in § 80.1164 in order to correct minor technical errors, clarify the procedures required to be fulfilled by the attest auditor, and, where possible, revise the procedures to make them less burdensome without compromising the goals of the program. For audits of the obligated party compliance demonstration reports, the rule is revised to require the attest auditor to calculate the total number of RINs used for compliance by year of generation and reconcile that total with the information reported to EPA rather than calculating and reporting as a finding all RINs used for compliance. For audits of the RIN transaction and RIN activity reports, the rule is revised to clarify the type of documentation that is required to be provided to the attest auditor for purposes of verifying the information contained in the reports. The rule is also revised to require the attest auditor to review product transfer documents (PTDs) for a representative sample of RINs used for compliance and for a representative sample of renewable fuel batches that any party sells to another party. Under the current regulations, the auditor is required to review PTDs for each batch of renewable fuel produced or imported by a renewable fuel producer or importer, which we believe is unnecessarily burdensome, and does not require review of PTDs generated by other parties. In addition, the rule is revised to provide that the documentation required for the attest audit of the RIN activity reports must include, for owners of assigned RINs, the volume of renewable fuel owned at the end of the quarter in order to verify the accuracy of information relating to compliance with the end-of-quarter inventory check in § 80.1128(a)(5). The rule adds a requirement that a company representative must provide the attest auditor with a written representation that the copies of the EPA reports provided to the auditor are complete and accurate copies of the reports. This is a requirement for attest procedures under other fuels programs and omission of this requirement in the RFS rule was an oversight. The rule also includes a provision which requires the attest auditor to identify the commercial computer program used by the regulated party to track the data required for

purposes of compliance with the RFS requirements.

## V. Relationship to the Energy Independence and Security Act of 2007

The Energy Independence and Security Act of 2007 (EISA) amended Clean Air Act section 211(o) in many respects, including requiring a substantially greater volume of renewable fuel use in the future. EPA is currently developing implementing regulations for this new legislation. EISA also included language addressing the transition period between its enactment and the time when new regulations are promulgated. EISA Section 210(a)(2) provides that “[u]ntil January 1, 2009, the Administrator of the Environmental Protection Agency shall implement section 211(o) of the Clean Air Act and the rules promulgated under that section in accordance with the provisions of that section as in effect before the enactment of this Act and in accordance with the rules promulgated before the enactment of this Act,” with certain exceptions. EPA believes that the intent of this transition provision of EISA was to maintain the fundamental program components and requirements of the existing regulations, but that it does not limit EPA’s ability to make minor programmatic changes that ease the administration and implementation of the current program. Accordingly, EPA views the changes made today to the 211(o) regulations to be “in accordance” with the regulations in effect when EISA was enacted, and will implement the amended regulations upon their effective date.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review. This direct final rule simply makes minor technical changes to the RFS regulations and modifies the requirements to make them less burdensome for regulated parties where possible.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes minor technical corrections to the regulations and modifies certain requirements to lessen the burden on related parties while maintaining the overall goals of the program. None of the changes in the rule require any additional information collection burdens. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 80, subpart K, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0600. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action makes minor technical corrections to the regulations and modifies certain requirements to lessen the burden on regulated parties while maintaining the overall goals of the program. We have therefore concluded that today’s direct final rule will relieve regulatory burden for affected small entities.

### D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action makes minor technical corrections to the RFS regulations and modifies certain provisions to lessen the requirements for regulated parties. As a result, this rule will have the overall effect of reducing the burden of the RFS regulations on regulated parties. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline and renewable fuel producers, importers, distributors and marketers and makes minor corrections and modifications to the RFS regulations.

### E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have

federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action makes minor technical corrections and modifications to existing regulations in order to lessen the burden on related parties. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This direct final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline and renewable fuel producers, importers, distributors and marketers. This action makes minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These technical amendments do not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Clean Air Act Section 307(d)*

This rule is subject to Section 307(d) of the CAA. Section 307(d)(7)(B) provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 25, 2008.

**Stephen L. Johnson,**  
Administrator.

■ 40 CFR part 80 is amended as follows:

**PART 80—REGULATION OF FUEL AND FUEL ADDITIVES**

■ 1. The authority citation for part 80 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.1101 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

**§ 80.1101 Definitions.**

\* \* \* \* \*

(d) \* \* \*

(2) The term "Renewable fuel" includes cellulosic biomass ethanol, waste derived ethanol, biodiesel (mono-alkyl ester), non-ester renewable diesel, and blending components derived from renewable fuel.

(3) Ethanol covered by this definition shall be denatured as required and defined in 27 CFR parts 20 and 21. Any volume of denaturant in ethanol in excess of 5 volume percent shall not be included in the volume of ethanol for purposes of determining compliance with the requirements under this subpart.

\* \* \* \* \*

■ 3. Section 80.1107 is amended by revising paragraph (c) introductory text to read as follows:

**§ 80.1107 How is the Renewable Volume Obligation calculated?**

\* \* \* \* \*

(c) All of the following products that are produced or imported during a compliance period, collectively called "gasoline" for purposes of this section (unless otherwise specified), are to be included (but not double-counted) in the volume used to calculate a party's renewable volume obligation under paragraph (a) of this section, except as provided in paragraph (d) of this section:

\* \* \* \* \*

■ 4. Section 80.1126 is amended by revising paragraphs (a)(1), (b) and (d)(1) to read as follows:

**§ 80.1126 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers and importers?**

(a) \* \* \*

(1) Except as provided in paragraph (b) of this section, a batch RIN must be generated by a renewable fuel producer or importer for every batch of renewable fuel produced by a facility located in the contiguous 48 states of the United States, or imported into the contiguous 48 states.

\* \* \* \* \*

(b) *Volume threshold.* Renewable fuel producers located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers that import less than 10,000 gallons of renewable fuel each year, are not required to generate and assign RINs to batches of renewable fuel. Such producers and importers are also exempt from the registration, reporting, and recordkeeping requirements of §§ 80.1150–80.1152, and the attest engagement requirements of § 80.1164. However, for such producers and

importers that voluntarily generate and assign RINs, all the requirements of this subpart apply.

\* \* \* \* \*

(d) \* \* \*

(1) Except as provided in paragraph (b) of this section, the producer or importer of a batch of renewable fuel must generate a batch-RIN for that batch, including any renewable fuel contained in imported gasoline.

\* \* \* \* \*

■ 5. Section 80.1127 is amended by revising paragraph (b)(2) to read as follows:

**§ 80.1127 How are RINs used to demonstrate compliance?**

\* \* \* \* \*

(b) \* \* \*

(2) A deficit is calculated according to the following formula:

$$D_i = RVO_i - [(\sum RINNUM)_i + (\sum RINNUM)_{i-1}]$$

Where:

$D_i$  = The deficit, in gallons, generated in calendar year  $i$  that must be carried over to year  $i+1$  if allowed to do so pursuant to paragraph (b)(1)(i) of this section.

$RVO_i$  = The Renewable Volume Obligation for the obligated party or renewable fuel exporter for calendar year  $i$ , in gallons.

$(\sum RINNUM)_i$  = Sum of all acquired gallon-RINs that were generated in year  $i$  and are being applied towards the  $RVO_i$ , in gallons.

$(\sum RINNUM)_{i-1}$  = Sum of all acquired gallon-RINs that were generated in year  $i-1$  and are being applied towards the  $RVO_i$ , in gallons.

■ 6. Section 80.1128 is amended as follows:

■ a. By revising paragraphs (a)(5)(ii) and (a)(5)(iii).

■ b. By removing paragraphs (a)(5)(iv) and (a)(5)(v).

■ c. By revising paragraph (a)(6).

■ d. By removing paragraph (a)(7).

**§ 80.1128 General requirements for RIN distribution.**

(a) \* \* \*

(5) \* \* \*

(ii) The equivalence value  $EV_i$  for use in the equation in paragraph (a)(5)(i) of this section for any volume of renewable fuel shall be 2.5.

(iii) The applicable dates are March 31, June 30, September 30, and December 31. For 2007 only, the applicable dates are September 30 and December 31.

(6) Any transfer of ownership of assigned RINs must be documented on product transfer documents generated pursuant to § 80.1153.

(i) The RIN must be recorded on the product transfer document used to transfer ownership of the RIN and the volume to another party; or

(ii) The RIN must be recorded on a separate product transfer document transferred to the same party on the same day as the product transfer document used to transfer ownership of the volume of renewable fuel.

\* \* \* \* \*

■ 7. Section 80.1129 is amended as follows:

■ a. By revising paragraphs (b)(1), (b)(2), (b)(4) and (b)(6).

■ b. By adding paragraph (b)(8).

■ c. By revising paragraph (d).

**§ 80.1129 Requirements for separating RINs from volumes of renewable fuel.**

\* \* \* \* \*

(b) \* \* \*

(1) Except as provided in paragraphs (b)(6) and (b)(8) of this section, a party that is an obligated party according to § 80.1106 must separate any RINs that have been assigned to a volume of renewable fuel if they own that volume.

(2) Except as provided in paragraph (b)(5) of this section, any party that owns a volume of renewable fuel must separate any RINs that have been assigned to that volume once the volume is blended with gasoline or diesel to produce a motor vehicle fuel. A party may separate up to 2.5 RINs per gallon of fuel that is blended.

\* \* \* \* \*

(4) Any person that produces, imports, owns, sells or uses a volume of renewable fuel may separate any RINs that have been assigned to that volume of renewable fuel if the person designates the renewable fuel as motor vehicle fuel and the renewable fuel is used as a motor vehicle fuel.

\* \* \* \* \*

(6) For RINs that an obligated party generates from renewable fuel that has not been blended into gasoline, the obligated party can only separate such RINs from volumes of renewable fuel if the number of gallon-RINs separated is less than or equal to its annual RVO.

\* \* \* \* \*

(8) For a party that has received a small refinery exemption under § 80.1141 or a small refiner exemption under § 80.1142, during the period of time that the small refinery or small refiner exemption is in effect, the party may only separate RINs that have been assigned to volumes of renewable fuel that the party blends into motor vehicle fuel.

\* \* \* \* \*

(d) Upon and after separation of a RIN from its associated volume, product transfer documents used to transfer ownership of the volume must continue

to meet the requirements of § 80.1153(a)(5)(iii).

\* \* \* \* \*

■ 8. Section 80.1131 is amended by adding paragraph (a)(8) and removing paragraph (b)(4) to read as follows:

§ 80.1131 Treatment of invalid RINs.

(a) \* \* \*

(8) In the event that the same RIN is transferred to two or more parties, all such RINs will be deemed to be invalid, unless EPA in its sole discretion determines that some portion of these RINs is valid.

\* \* \* \* \*

■ 9. Section 80.1132 is amended as follows:

- a. By revising the section heading.
■ b. By revising paragraph (a).
■ c. By revising paragraph (b) introductory text.
■ d. By revising paragraph (c).

§ 80.1132 Reported spillage or disposal of renewable fuel.

(a) A reported spillage or disposal under this subpart means a spillage or disposal of renewable fuel associated with a requirement by a federal, state or local authority to report the spillage or disposal.

(b) Except as provided in paragraph (c) of this section, in the event of a reported spillage or disposal of any volume of renewable fuel, the owner of the renewable fuel must retire a number of gallon-RINs corresponding to the volume of spilled or disposed of renewable fuel multiplied by the lesser of its equivalence value or the number of RINs received with the spilled or disposed fuel, not to exceed 2.5 RINs per gallon.

\* \* \* \* \*

(c) If the owner of a volume of renewable fuel that is spilled or disposed of and reported establishes that no RINs were generated to represent the volume, then no gallon-RINs shall be retired.

\* \* \* \* \*

■ 10. Section 80.1141 is amended by revising paragraph (a)(1), adding paragraph (a)(4), and revising paragraph (b)(2)(ii) to read as follows:

§ 80.1141 Small refinery exemption.

(a)(1) Gasoline produced at a refinery by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 and the requirements that apply to obligated parties under this subpart if that refinery meets the definition of a small refinery under § 80.1101(g) for calendar year 2004.

\* \* \* \* \*

(4) This exemption shall only apply to refineries that process crude oil, or feedstocks derived from crude oil, through refinery processing units.

(b) \* \* \*

(2) \* \* \*

(ii) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the letter is true to the best of his/her knowledge, and that the refinery was small as of December 31, 2004.

\* \* \* \* \*

■ 11. Section 80.1142 is amended by revising paragraph (a)(1) introductory text, adding paragraph (a)(4), and revising paragraph (e) to read as follows:

§ 80.1142 What are the provisions for small refiners under the RFS program?

(a)(1) Gasoline produced by a refiner, or foreign refiner (as defined at § 80.1165(a)), is exempt from the renewable fuel standards of § 80.1105 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner does not meet the definition of a small refinery under § 80.1101(g) but meets all of the following criteria:

\* \* \* \* \*

(4) This exemption shall only apply to refineries that process crude oil, or feedstocks derived from crude oil, through refinery processing units.

\* \* \* \* \*

(e) A refiner who qualifies as a small refiner under this section and subsequently fails to meet all of the qualifying criteria as set out in paragraph (a) of this section will have its small refiner exemption terminated effective January 1 of the next calendar year.

(1) In the event such disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following the disqualifying event.

(2) Disqualification under this paragraph (e) shall not apply in the case of a merger between two approved small refiners.

\* \* \* \* \*

■ 12. Section 80.1151 is amended by revising paragraphs (a)(3)(i), (b)(4)(i), and (d)(3)(i) to read as follows:

§ 80.1151 What are the recordkeeping requirements under the RFS program?

(a) \* \* \*

(3) \* \* \*

(i) A list of the RINs owned, purchased, sold, or retired.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) A list of the RINs owned, purchased, sold, or retired.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) A list of the RINs owned, purchased, sold or retired.

\* \* \* \* \*

■ 13. Section 80.1152 is amended by removing and reserving paragraph (c)(1)(iii), and revising paragraphs (c)(1)(v) and (c)(2) to read as follows:

§ 80.1152 What are the reporting requirements under the RFS program?

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) [Reserved]

\* \* \* \* \*

(v) Transaction type (RIN purchase, RIN sale, retired RIN).

\* \* \* \* \*

(2) A quarterly gallon-RIN activity report shall be submitted to EPA according to the schedule specified in paragraph (d) of this section. Each report shall summarize gallon-RIN activities for the reporting period, separately for RINs assigned to a renewable fuel volume and RINs separated from a renewable fuel volume. The quarterly gallon-RIN activity report shall include all of the following information:

(i) The submitting party's name.

(ii) The party's EPA company registration number.

(iii) The number of current-year gallon-RINs owned at the start of the quarter.

(iv) The number of prior-year gallon-RINs owned at the start of the quarter.

(v) The total current-year gallon-RINs purchased.

(vi) The total prior-year gallon-RINs purchased.

(vii) The total current-year gallon-RINs sold.

(viii) The total prior-year gallon-RINs sold.

(ix) The total current-year gallon-RINs retired.

(x) The total prior-year gallon-RINs retired.

(xi) The number of current-year gallon-RINs owned at the end of the quarter.

(xii) The number of prior-year gallon-RINs owned at the end of the quarter.

(xiii) For parties reporting gallon-RIN activity under this paragraph for RINs assigned to a volume of renewable fuel, the total volume of renewable fuel (in gallons) owned at the end of the quarter.

(xiv) Any additional information that the Administrator may require.

\* \* \* \* \*

■ 14. Section 80.1153 is amended by revising paragraph (a)(5)(iii) to read as follows:

**§ 80.1153 What are the product transfer document (PTD) requirements for the RFS program?**

- (a) \* \* \*  
(5) \* \* \*

(iii) If no assigned RINs are being transferred with the renewable fuel, the PTD which is used to transfer ownership of the renewable fuel shall state "No assigned RINs transferred".

■ 15. Section 80.1154 is amended by adding paragraph (a)(4) and revising paragraph (b) to read as follows:

**§ 80.1154 What are the provisions for renewable fuel producers and importers who produce or import less than 10,000 gallons of renewable fuel per year?**

- (a) \* \* \*

(4) The attest engagement requirements of § 80.1164.

(b) Renewable fuel producers and importers who produce or import less than 10,000 gallons of renewable fuel each year and that generate and/or assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1150 through 80.1152, and § 80.1164.

■ 16. Section 80.1160 is amended by revising paragraphs (a) and (b)(1), and by adding paragraph (f) to read as follows:

**§ 80.1160 What acts are prohibited under the RFS program?**

(a) *Renewable fuel producer or importer violation.* Except as provided in § 80.1154, no person shall produce or import a renewable fuel without generating a batch-RIN as required under § 80.1126.

- (b) \* \* \*

(1) Improperly generate a RIN (e.g., generate a RIN for which the applicable renewable fuel volume was not produced).

\* \* \* \* \*

(f) *Failure to meet a requirement.* No person shall fail to meet any requirement that applies to that person under this subpart.

■ 17. Section 80.1164 is amended as follows:

■ a. By revising paragraphs (a)(1)(ii) through (a)(1)(v).

■ b. By adding paragraphs (a)(1)(vi) through (a)(1)(viii).

■ c. By revising paragraphs (a)(2)(i) and (a)(2)(ii).

■ d. By adding paragraph (a)(2)(iii).

■ e. By revising paragraph (a)(3)(ii).

■ e. By revising paragraphs (b)(1)(ii) through (b)(1)(iv).

■ f. By revising paragraphs (b)(2)(i) and (b)(2)(ii).

■ g. By adding paragraph (b)(2)(iii).

■ h. By revising paragraph (b)(3)(ii).

■ i. By revising paragraphs (c)(1)(i) and (c)(1)(ii).

■ j. By adding paragraph (c)(1)(iii).

■ k. By revising paragraph (c)(2)(ii).

■ l. By adding paragraphs (e) and (f).

**§ 80.1164 What are the attest engagement requirements under the RFS program?**

\* \* \* \* \*

- (a) \* \* \*

- (1) \* \* \*

(ii) Obtain documentation of any volumes of renewable fuel used in gasoline at the refinery or import facility or exported during the reporting year; compute and report as a finding the total volumes of renewable fuel represented in these documents.

(iii) Compare the volumes of gasoline reported to EPA in the report required under § 80.1152(a)(1) with the volumes, excluding any renewable fuel volumes, contained in the inventory reconciliation analysis under § 80.133, and verify that the volumes reported to EPA agree with the volumes in the inventory reconciliation analysis.

(iv) Compute and report as a finding the obligated party's or exporter's RVO, and any deficit RVO carried over from the previous year or carried into the subsequent year, and verify that the values agree with the values reported to EPA.

(v) Obtain the database, spreadsheet, or other documentation for all RINs used for compliance during the year being reviewed; calculate the total number of RINs used for compliance by year of generation represented in these documents; state whether this information agrees with the report to EPA and report as a finding any exceptions.

(vi) Identify a representative sample, selected in accordance with the guidelines in § 80.127, of RINs used for compliance during the year being reviewed.

(vii) Obtain contracts, invoices or other documentation for RINs in the representative sample obtained in paragraph (a)(1)(vi) of this section, and the product transfer documents for the RINs in the representative sample; state whether the information in these documents agrees with the information in the party's report to EPA and report as a finding any exceptions.

(viii) Verify that the product transfer documents for the representative sample of RINs used for compliance contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not

contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative sample and report as a finding any exceptions.

- (2) \* \* \*

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each RIN transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(a)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for each of the representative samples of RIN transactions, and the product transfer documents for each of the representative samples of RIN transactions; compute the transaction types, transaction dates, and RINs traded; state whether the information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

- (3) \* \* \*

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the gallon-RIN activity reports; compare the RIN transaction samples reviewed under paragraph (a)(2) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year gallon-RINs owned at the start and end of the quarter, purchased, sold and retired, and for parties that reported gallon-RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of the quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

- (b) \* \* \*

- (1) \* \* \*

(ii) Obtain production data for each renewable fuel batch produced or imported during the year being reviewed; compute the RIN numbers, production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; state whether this

information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the proper number of RINs were generated and assigned for each batch of renewable fuel produced or imported, as required under § 80.1126.

(iv) Identify a representative sample, selected in accordance with the guidelines in § 80.127, of renewable fuel batches produced or imported during the year being reviewed; obtain product transfer documents for the representative sample; verify that the product transfer documents contain the applicable information required under § 80.1153; verify the accuracy of the information contained in the product transfer documents; report as a finding any product transfer document that does not contain the applicable information required under § 80.1153.

(2) \* \* \*

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(b)(2) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for each of the representative samples of RIN transactions, and the product transfer documents for each of the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the product transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

(3) \* \* \*

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the gallon-RIN activity reports; compare the RIN transaction samples reviewed under paragraph (b)(2) of this section with the corresponding entries in the data base or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year gallon-RINs owned at the start and end of the quarter, purchased, sold and retired, and for parties that reported

gallon-RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of the quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

(c) \* \* \*

(1) \* \* \*

(i) Identify a representative sample, selected in accordance with the guidelines in § 80.127, separately for each RIN transaction type (RINs purchased, RINs sold, RINs retired) included in the RIN transaction reports required under § 80.1152(c)(1) for the compliance year.

(ii) Obtain contracts, invoices, or other documentation for the representative samples of RIN transactions, and the product transfer documents for the representative samples of RIN transactions; compute the transaction types, transaction dates, and the RINs traded; state whether this information agrees with the party's reports to EPA and report as a finding any exceptions.

(iii) Verify that the transfer documents for the representative sample of RINs sold and the representative sample of RINs purchased contain the applicable information required under § 80.1153 and report as a finding any product transfer document that does not contain the required information; verify the accuracy of the information contained in the product transfer documents for the representative samples and report as a finding any exceptions.

(2) \* \* \*

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the gallon-RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the data base or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year gallon-RINs owned at the start and end of the quarter, purchased, sold and retired, and for parties that reported gallon-RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of the quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

\* \* \* \* \*

(e) The party conducting the procedures under this section shall obtain a written representation from a company representative that the copies of the reports required by this section are complete and accurate copies of the reports filed with EPA.

(f) The party conducting the procedures under this section shall identify and report as a finding the commercial computer program used by the party to track the data required by the regulations in this subpart, if any.

■ 18. Section 80.1165 is amended by revising paragraphs (f)(1)(vi) and (o)(2) to read as follows:

**§ 80.1165 What are the additional requirements under this subpart for a foreign small refiner?**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(vi) Inspections and audits by EPA may include interviewing employees.

\* \* \* \* \*

(o) \* \* \*

(2) Signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1165 apply to [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.

■ 19. Section 80.1166 is amended by revising paragraph (o)(2) to read as follows:

**§ 80.1166 What are the additional requirements under this subpart for a foreign producer of cellulosic biomass ethanol or waste derived ethanol?**

\* \* \* \* \*

(o) \* \* \*

(2) Signed by the president or owner of the foreign producer company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to

bind [insert name of foreign producer] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K, including 40 CFR 80.1165 apply to [insert name of foreign producer]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.

■ 20. Section 80.1167 is amended by revising paragraph (e) introductory text and paragraph (j)(2) to read as follows:

**§ 80.1167 What are the additional requirements under this subpart for a foreign RIN owner?**

\* \* \* \* \*

(e) *Bond posting.* Any foreign entity shall meet the requirements of this paragraph (e) as a condition to approval as a foreign RIN owner under this subpart.

\* \* \* \* \*

(j) \* \* \*

(2) Signed by the president or owner of the foreign RIN owner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign RIN owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being Certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subpart K, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being Certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof. I affirm that I have read and understand the provisions of 40 CFR part 80, subpart K,

including 40 CFR 80.1167 apply to [insert name of foreign RIN owner]. Pursuant to Clean Air Act section 113(c) and 18 U.S.C. 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000 U.S., and/or imprisonment for up to five years.

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## DEPARTMENT OF THE INTERIOR

### 43 CFR Part 11

#### RIN 1090-AA97

#### Natural Resource Damages for Hazardous Substances

**AGENCY:** Department of the Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends certain parts of the natural resource damage assessment regulations for hazardous substances. The regulations provide procedures that natural resource trustees may use to evaluate the need for and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances. The Department of the Interior has previously developed two types of natural resource damage assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (the Type A Rule); and site-specific procedures for detailed assessments in individual cases (the Type B Rule).

This final rule revises the Type B Rule to emphasize resource restoration over economic damages. It also responds to two court decisions addressing the regulations: *State of Ohio v. U.S. Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio v. Interior*); and *Kennecott Utah Copper Corp. v. U.S. Department of the Interior*, 88 F.3d 1191 (DC Cir. 1996) (*Kennecott v. Interior*), and includes a technical revision to resolve an apparent inconsistency in the timing provisions for the assessment process set out in the rule.

**EFFECTIVE DATE:** The effective date of this final rule is November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Frank DeLuise at (202) 208-4143.

**SUPPLEMENTARY INFORMATION:** This preamble is organized as follows:

- I. What the Natural Resource Damage Regulations Are About
- II. Why We Are Revising Parts of the Regulations
- III. Major Issues Addressed by the Revisions

- A. Further Emphasizing Natural Resource Restoration Over Economic Damages
- B. Complying With *Ohio v. Interior* and Responding to *Kennecott v. Interior*
- C. Technical Corrections for Consistent Assessment Timing Guidelines
- IV. Response to Comments
  - A. Emphasizing Restoration Over Economic Damages
  - B. Examples of Restoration-Based Damage Determination Methodologies
  - C. Factors for Evaluating the Feasibility and Reliability of Methodologies
  - D. Restoration of Resources Versus Services
  - E. Clarification on Assessment Process Timing
  - F. Deletion of the Bar on the Use of Contingent Valuation to Estimate Option and Existence Value To Comply With *Ohio v. Interior*
  - G. Deletion of the Date of Promulgation for the Statute of Limitations Provisions To Comply With *Ohio v. Interior*
  - H. Miscellaneous Comments

#### I. What The Natural Resource Damage Regulations Are About

The regulations describe how to conduct a natural resource damage assessment for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rulemaking responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear in the Code of Federal Regulations (CFR) at 43 CFR Part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of securing, restoration of public natural resources following the release of hazardous substances or oil into the environment. The regulations we are revising only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR Part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701 (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the revisions to the regulations use "restoration" as an umbrella term for all types of actions that the natural resource damage provisions of CERCLA and the Clean Water Act authorize to address injured natural resources, including restoration,

rehabilitation, replacement, or acquisition of equivalent resources.

Natural resource damage assessments are conducted by government officials designated to act as “trustees” to bring claims on behalf of the public for the restoration of injured natural resources. Trustees are designated by the President, state governors, or tribes. If trustees determine, through an assessment, that hazardous substance releases have injured natural resources, they may pursue claims for damages against potentially responsible parties. “Damages” include funds needed to plan and implement restoration, compensation for public losses pending restoration, reasonable assessment costs, and any interest accruing after funds are due. See 43 CFR 11.15.

The regulations establish an administrative process for conducting assessments that includes technical criteria for determining whether releases have caused injury, and if so, what actions and funds are needed to implement restoration. The regulations are for the optional use of trustees. Trustees can use the regulations to structure damage assessment work, frame negotiations, and inform restoration planning. If litigation is necessary to resolve the claim, courts will give additional deference—referred to as a “rebuttable presumption” in CERCLA—to assessments performed by federal and state trustees in accord with the regulations.

The regulations provide guidance on two different types of assessment procedures identified in CERCLA: “Type A” and “Type B” procedures. Type A procedures are simplified procedures for small cases. The current Type A procedures are computer programs, available in a limited range of cases, that model the fate of a released substance in order to project the injuries caused by the release and calculate damages. Type B procedures outline an assessment process and assessment methods that trustees utilize on a case by case basis. We are revising certain parts of the Type B procedures (case by case assessment provisions) in the regulations.

## II. Why We Are Revising the Regulations

CERCLA provides that we review and revise the regulations as appropriate every two years. 42 U.S.C. 9651(c)(3). To assist in this most recent review, in May 2005, DOI convened a Natural Resource Damage Assessment and Restoration (NRDAR) Federal Advisory Committee (advisory committee) to provide recommendations regarding DOI’s NRDAR activities, authorities and

responsibilities. The advisory committee comprised 30 members, representing a diverse group of interested stakeholders—including state, tribal, and federal trustee agencies, industry groups and potentially responsible party representatives, scientists, economists, and national and local environmental and public interest organizations.

A key recommendation of the advisory committee was that DOI should undertake, without delay, a targeted revision of the regulations to emphasize restoration over monetary damages. This revision implements that recommendation, and responds to two court decisions addressing the regulations: *State of Ohio v. U.S. Department of the Interior*, 880 F.2d 432 (DC Cir. 1989) (*Ohio v. Interior*); and *Kennecott Utah Copper Corp. v. U.S. Department of the Interior*, 88 F.3d 1191 (DC Cir. 1996) (*Kennecott v. Interior*). Finally, we are making a technical revision to resolve an inconsistency on the appropriate timing for the administrative process set out in the rule.

We have considered:

- (a) The NRDAR advisory committee report, which was released in May of 2007;
- (b) Comments provided on the proposed rule revisions published in the **Federal Register** on February 29, 2008;
- (c) The *Ohio v. Interior* opinion;
- (d) The *Kennecott v. Interior* opinion; and
- (e) The OPA regulations.

## III. Major Issues Addressed by the Revisions

Our revisions will largely leave the framework of the existing rule intact. We are not making substantive changes to legal standards for reliability of assessment data and methodologies. The NRDAR advisory committee made a number of recommendations to encourage faster, more efficient and more cost-effective resolution of claims. The committee endorsed a tiered approach to implementing its recommendations that would immediately address the option of emphasizing restoration over economic damages in the regulations, while leaving the implementation of a broader range of recommendations—including providing technical guidance documents and streamlining of the restoration planning process—to the future. The rest of this section discusses the major issues addressed by the revisions. The following section references the OPA regulations. These references are solely for the purpose of providing context and background. For

guidance on conducting natural resource damage assessments under OPA, see 15 CFR Part 990.

### A. Further Emphasizing Restoration Over Economic Damages

Under the current regulations, trustees utilizing the Type B procedures must base their claim on the cost of implementing a publicly reviewed restoration plan designed to return injured resources to their baseline condition, which is defined as the condition that would have existed had the release not occurred (see 43 CFR 11.80–82). CERCLA and the Clean Water Act authorize trustees to recover damages not only for the cost of restoring injured or destroyed resources to their baseline condition, but also for public losses pending restoration to baseline. The regulations call these interim losses “compensable values” (see 43 CFR 11.83(c)). The regulations define compensable value as the amount of money required to compensate the public for the loss in “services” provided by the injured resources pending restoration (see 43 CFR 11.83(c)(1)). Services are defined in the current regulations as the physical and biological functions performed by the resources, including the human use of those functions. The current regulations provide that compensable value should be measured by the economic value of public losses arising from the resource injury until restoration can be achieved, which arguably could be read as excluding restoration-based approaches to determining compensable value.

To comply with CERCLA and the Clean Water Act, trustees must spend any compensable value recoveries on restoration actions. Under the current regulations, however, trustees do not need to consider restoration actions to address interim losses until they have already determined and recovered damages. This can be inefficient and confusing. The NRDAR advisory committee recommended that DOI should amend its current regulation to explicitly authorize trustees to use the cost of restoration actions that address service losses to calculate all damages, including interim losses. Providing the option for a “restoration-based” approach to all damages better comports with CERCLA’s overall restoration objectives. It also promotes an earlier focus on feasible restoration options, which can encourage settlements by providing opportunities for designing creative and cost-effective actions to address losses. We are revising 43 CFR 11.83(c) to provide trustees with the option of estimating compensable values for losses pending restoration

utilizing the cost of implementing projects that restore those lost natural resource services.

Methodologies that compare losses arising from resource injury to gains expected from restoration actions are frequently simpler and more transparent than methodologies used to measure the economic value of losses. Our revisions include four examples of project-based assessment methodologies—conjoint analysis, habitat equivalency analysis, resource equivalency analysis, and random utility models—which have been used successfully to resolve claims under both the CERCLA and the OPA regulations. We are also adding a brief description of these restoration-based methodologies to the non-exclusive list of economic valuation methodologies in the current regulation. Our revisions do not sanction or bar the use of any particular methodology, so long as it complies with the four mandatory “acceptance criteria”—which include feasibility and reliability, reasonable cost, avoidance of double counting, and cost effectiveness—that appear in the current rule in § 11.83(a)(3).

The list of methodologies for assessing compensable values remains non-exclusive, allowing for the introduction of new and innovative techniques that may arise. As mentioned above, the current regulations provide that when choosing among any cost estimation or valuation methodology, trustees must ensure that the methodologies selected are feasible and reliable for a particular incident or type of damage to be measured. To assist trustees in evaluating feasibility and reliability, we are providing a list of factors that set out general principles of feasibility and reliability—such as the ability to provide useful restoration information, peer review, and methodological standards—for trustees to consider when evaluating the reliability of all valuation and damage assessment methodologies. Each of the listed factors may not be applicable in every case, and other relevant factors may be considered. Trustees continue to be required to document their consideration of relevant factors in the Report of Assessment.

#### *B. Complying With Ohio v. Interior and Responding to Kennecott v. Interior*

Several provisions of the current regulations were invalidated by the DC Circuit Court of Appeals in *Ohio v. Interior* and *Kennecott v. Interior*. Some invalidated provisions from the 1986 rule were carried over in the 1994 revisions responding to the *Ohio v. Interior* decision. Additionally, the *Kennecott v. Interior* decision in 1996

invalidated certain provisions from the 1994 revisions which have not yet been corrected to comply with the decision. In the final rule, we are making technical corrections to the CFR in accord with these decisions.

The *Ohio v. Interior* decision invalidated the limitation on estimating option and existence value in 43 CFR 11.83(c)(1)(iii). Our revisions will therefore delete this provision from the CFR. The restatement of this limitation in 43 CFR 11.83(c)(2)(vii)(B) will also be deleted from the CFR.

Estimating option and existence value through the use of contingent valuation methodologies remains controversial. We note, however, that our revision’s focus on compensating for public losses pending restoration with restoration actions rather than monetary damages for the economic value of the losses will provide options for comparing functional losses from resource injuries to functional gains expected from restoration actions, which will reduce the need for trustees to seek to recover the monetary value of passive economic losses such as option and existence value.

The *Kennecott v. Interior* decision invalidated DOI’s attempt to define the date of promulgation of the 1994 revisions to the rule. This was relevant because it affected the three-year statutory limitations for filing a claim at some CERCLA sites. In 43 CFR 11.91(e), DOI defined the date of promulgation as the later of the date when either the Type A or Type B Rule was finalized, pursuant to the *Ohio v. Interior* decision. The Court of Appeals found this interpretation unreasonable and invalidated the provision, which we will delete from the CFR. Since both the Type A and Type B revisions finalized pursuant to the *Ohio v. Interior* decision were finalized more than three years ago, this deletion is merely a technical correction which has no material effect.

The 1994 revisions to the NRDAR rule stated that the measure of natural resource damages under CERCLA was the cost of restoration of “the injured natural resources and the services those resources provide” (see 43 CFR 11.80(b)). In the *Kennecott* decision, the Court of Appeals invalidated this language because it was inconsistent with DOI’s preamble explanation of the measure of damages, which endorsed the concept of quantifying resource injury and resulting public losses by utilizing a services metric. The court reasoned that creating an apparent dichotomy between restoration of resources and restoration of services implied an abandonment of the services approach that was unexplained. The

court therefore invalidated the “resources and services” language and “reinstated” the services approach, pending further clarification.

Under the current rule, natural resource damages include both the cost of restoring injured resources to a condition where they can provide the level of services available at baseline level of services and, when appropriate, compensation for interim service losses pending restoration. Under the current rule, restoration to baseline focuses on the resource condition, while compensable value focuses on compensation for lost services pending the restoration of resources. “Resources and services” reflects the distinct emphases for different damage components, but it was not intended as a rejection of a services-based approach. As the revisions make clear, the metric for evaluating natural resource conditions for baseline restoration is the availability of the baseline level of services, while the compensable value for losses pending restoration is either the *value* of the services lost pending restoration or the *cost* of projects that compensate for services lost pending restoration.

The revision to 43 CFR 11.80(b) clarifies that the measure of damages is the cost of (1) restoring or rehabilitating the injured natural resources to a condition where they can provide the level of services available at baseline, or (2) replacing and/or acquiring equivalent natural resources capable of providing such services. Of course, damages can be measured by an appropriate combination of partial restoration or rehabilitation, and partial replacement and/or acquisition of equivalent resources, so long as there is no double counting. Damages may also include, at the discretion of the trustees, the compensable value of services lost pending restoration. This clear construct is carried over for conforming changes to 43 CFR 11.81(a)(1) and (2), 43 CFR 11.82(a), (b)(iii), and (c), and 43 CFR 11.83(a).

#### *C. Technical Correction To Provide Consistent Timing Guidelines*

The current regulations provide that a Restoration and Compensation Determination Plan (RCDP) which evaluates and selects restoration alternatives may be developed after completion of the injury determination and quantification phases of the assessment (see 43 CFR 11.81(d)(1)). However, an earlier provision of the current regulations provides that the RCDP can be developed “at any time before” completion of the injury determination or quantification phases.

(See 43 CFR 11.31(c)(4)). Since the evaluation and selection of restoration alternatives can benefit from more definitive injury determination and quantification data, we are resolving this inconsistency by correlating 43 CFR 11.31(c)(4) with 43 CFR 11.81(d)(1) to provide that the RCDP may be completed after the injury determination and quantification phases of the assessment.

#### IV. Response to Comments

The Department received 21 comments on the February 29, 2008 **Federal Register** Proposed Rulemaking Notice. The Department appreciates the time and effort expended by the commenters. This notice does not address any comments outside of the scope of the proposed targeted revisions. The NRDAR Advisory Committee considered other NRDAR practice issues—such as encouraging an early focus on restoration planning and streamlining the restoration implementation process. These and other issues concerning these regulations may be addressed in future biennial reviews.

##### A. Emphasizing Restoration Over Economic Damages

###### 1. Providing the Option To Calculate All Natural Resource Damages Utilizing a Restoration-Based Approach

*Comment:* Most commenters who expressed an opinion on the issue of allowing for restoration-based approaches to public losses pending restoration generally supported this change. Many commenters believed that restoration-based approaches better comport with the purposes of CERCLA.

*Response:* We believe that in many cases, restoration-based approaches can lead to timelier, more efficient, and more cost effective—which is the key objective of these revisions. The NRDAR process is streamlined by focusing directly on restoration alternatives that address losses, rather than on first estimating the monetary value of losses and then determining how to address them with appropriate projects. Moreover, the transparency involved in comparing resource gains to resource losses reduces controversy and transaction costs, and encourages collaborative efforts to identify projects that yield high human and ecological benefits relative to their monetary cost.

*Comment:* The factors to consider when selecting restoration-based alternatives to compensate for interim public losses pending restoration should be the same as those for selecting restoration-based alternatives to restore,

rehabilitate, replace, or acquire resources equivalent to those injured in § 11.82 of the rule.

*Response:* We agree that all restoration-based alternatives for damages should be evaluated consistently under the rule, and the revisions reflect this in § 11.82.

###### 2. Preserving the Option To Calculate Interim Public Loss Damages Utilizing the Economic Value of the Loss

*Comment:* Some commenters expressed concern that restoration-based approaches were “over-emphasized” and that trustees should retain the option of making claims for public losses pending restoration based on the monetary value of the losses.

*Response:* The purpose of the revisions is to remove any barriers that exist to utilizing restoration-based approaches to all damages, including damages for public losses pending restoration (compensable values.) The revisions do not, however, bar the use of methodologies that estimate the monetary value of public losses pending resource restoration. Therefore, recovering the monetary value of public losses pending restoration remains an option for trustees. Nevertheless, regardless of how damages are calculated, the focus of the NRDAR program is on achieving restoration, not on recovering monetary damages for their own sake.

##### B. Examples of Restoration-Based Damage Determination Methodologies

###### 1. Formally Sanctioning or Barring Particular Valuation and Assessment Methodologies

*Comment:* Some commenters suggested that DOI’s decision not to formally sanction or bar particular valuation and assessment methodologies is inconsistent with CERCLA and prior rulemakings. These commenters suggest that since CERCLA requires DOI to select the “best available procedures” (42 U.S.C. 9651(c)) to determine natural resource damages, and since the *Ohio* decision confirmed that contingent valuation—which is listed as a valuation and assessment methodology in § 11.83 as a best available procedure—DOI is required to sanction or bar valuation and assessment methodologies.

*Response:* The *Kennecott* decision upheld the rule’s use of “catch-all” provisions in § 11.83 that give trustees the discretion to utilize assessment methodologies other than those specifically listed in that section. This directly contradicts the idea that only specifically sanctioned assessment

methodologies are consistent with CERCLA. More importantly, the *Kennecott* decision made clear that the procedures and protocols required by CERCLA at 42 U.S.C. 9651(c) are interpreted to mean a standard method of evaluation, not a determinative list of methodologies that are definitively accurate in all circumstances. “Best available procedures” for applying an assessment or valuation methodology to the wide range of site specific conditions trustees might encounter should be considered in the context of the entire rule. This includes utility for determining appropriate restoration actions, evaluation against the four mandatory acceptance criteria, and the documentation of trustee choices and rationales in a plan subject to public review and comment. This is consistent with CERCLA, judicial interpretations of this rule, and statements by DOI in prior rulemakings.

###### 2. The Reliability of Restoration-Based Methodologies (Habitat/Resource Equivalency Analysis, Conjoint Analysis, and Random Utility Models) Referred to in the Revised Rule

*Comment:* Some commenters welcomed the proposal to provide some examples of restoration-based methodologies that have been used to formulate and resolve natural resource damage claims for calculating compensable values, and add those examples to a list that had exclusively included methodologies to determine monetary damages based on the economic value of the losses. A few commenters suggested that the CERCLA NRDAR rule should affirmatively encourage the use of habitat equivalency analysis, which is the case under the OPA NRDAR rule. Conversely, some commenters suggested that habitat equivalency, resource equivalency, and conjoint analyses were not unanimously considered to be reliable, and could be applied in a way that yielded unreliable results.

*Response:* The use of habitat equivalency analysis is explicitly encouraged under the OPA NRDAR rule. Conjoint analysis—a stated preference method that compares the resource services provided by various restoration alternatives to each other, rather than just estimating their monetary values—can be as properly applied and structured, consistent with the holdings of the *Ohio* court and the Report of the NOAA Blue Ribbon Panel on Contingent Valuation, as the currently listed contingent valuation methodology. Few of the methodologies currently listed in § 11.83 of the rule are universally accepted as definitively

accurate means for determining appropriate compensation for natural resource injury, and no listed methodology is immune from being applied in a way that could yield unreliable results. As stated in the previous response, the reliability of any methodology applied to a specific assessment is determined by a process that requires a trustee decision maker to develop and consider options, to evaluate those options based on certain criteria, and to document the rationale for choices made in a plan subject to public review and comment.

### 3. The Need for Further Guidance on the Use of Restoration-Based and Other Assessment Methodologies

*Comment:* Many commenters suggested that the Department should develop guidance on the proper utilization and application of restoration-based and other assessment methodologies.

*Response:* As recommended by the NRDAR FACA Committee, the Department plans to undertake and sponsor multi-stakeholder efforts to develop additional guidance to supplement existing guidance on best assessment practices.

### 4. Some of the Restoration-Based Methodologies Referred to in the Revised Rule Can Also Be Used To Estimate the Monetary Economic Value of Public Losses

*Comment:* One commenter said that although it is true that habitat equivalency, resource equivalency, and conjoint analyses, as well as random utility models are examples of restoration-based methodologies, conjoint analyses and random utility models can also be used to estimate monetary damages based on the economic value of losses.

*Response:* The list of methodologies is intended to include both restoration-based and the traditional monetary economic value based methodologies, since the rule gives the option to calculate damages for public losses pending restoration utilizing either approach. The revised rule specifically states that Random Utility Models may be suitable for calculating either restoration-based or monetary economic damages.

### C. Factors for Evaluating the Feasibility and Reliability of Methodologies

#### 1. Reasonable Cost, Cost Effectiveness, and Avoiding Double Counting Should Remain Mandatory Criteria for Valuation and Assessment Methodologies, and Not Just Factors To Utilize To Evaluate Feasibility and Reliability

*Comment:* Some commenters indicated general support for offering guidance to trustees on discretionary factors to consider on methodology feasibility and reliability, but pointed out that no justification is given for transforming mandatory acceptance criteria for valuation and assessment methodologies into discretionary “factors” that trustees should consider and document in their Restoration and Compensation Determination Plan.

*Response:* We did not intend to suggest that reasonable cost, cost effectiveness, and avoiding double counting were no longer mandatory acceptance criteria. All three of these criteria are required by other parts of the rule, so the intent was that they would be applicable in all cases, even if they were included within a list of factors that would not be applicable in all cases. The final rule revision clarifies this by leaving the current rule’s language on mandatory criteria for methodologies that includes feasibility and reliability, reasonable cost, cost effectiveness, and avoiding double counting intact, and distinguishing these criteria from discretionary factors that can be used to consider and document feasibility and reliability.

#### 2. The New Feasibility and Reliability Factors in the Proposed Rule Amount to Additional Mandatory Criteria, Which Are Unnecessary and Will Lead to Increased Transaction Costs and Delay, Further Deterring Trustees From Using the Rule

*Comment:* Some commenters indicated they were strongly opposed to DOI suggesting additional factors that trustees could utilize to evaluate the feasibility and reliability of assessment methodologies. The mandatory application of some or all of these factors will increase transaction costs, create hurdles to completing assessments and implementing restoration, and thus deter trustees from utilizing this discretionary rule.

*Response:* As indicted in the response above, the four mandatory criteria for assessment methodologies remain unchanged in this final rule. We do not believe that including a new section that includes discretionary, non-exclusive factors for trustees to consider in

evaluating the mandatory (but non-specific) “feasibility and reliability” criteria will unduly burden trustees, increase transaction costs, or deter trustees from utilizing the rule and availing themselves to a rebuttable presumption in any judicial or administrative proceeding on the claim. In fact, since feasibility and reliability are mandatory criteria for assessment methodologies under the rule, offering general guidance that includes examples of standard established indices of reliability will assist trustees in evaluating and documenting their choices, as required by the rule.

### 3. The Rule Should Affirmatively Provide That Methodologies Listed in 43 CFR 11.82 Are Feasible and Reliable

*Comment:* Some commenters said that the rule should make clear that all methodologies listed in § 11.83 have met the four mandatory criteria for assessment methodologies.

*Response:* The wide range of situations that trustees encounter when conducting a natural resource damage assessment makes it infeasible to determine that certain methodologies are definitively reliable in all circumstances and applications. As previously stated, the reliability of a particular assessment methodology in a particular situation is determined in the context of a rule which describes a process that requires a trustee decision maker to develop and consider options, to evaluate those options based on certain criteria, and to document the rationale for choices made in a plan subject to public review and comment.

### D. Restoration of Resources vs. Services

#### 1. The Reinstatement of the Services Based Approach to Quantifying Injury and Damages in the Rule Will Inappropriately Lead to the Restoration of Services Instead of Resources

*Comment:* The proposal “overemphasizes” the restoration of services over resources, and implies that CERCLA only requires the restoration of services, not the restoration of resources.

*Response:* CERCLA and the CWA unambiguously require that all NRDAR recoveries be used “only to restore, replace, or acquire the equivalent” of injured natural resources. Neither this rule, nor the *Kennecott* decision’s “reinstatement” of the services-based approach alters these mandatory and fundamental statutory requirements. As we are specifically providing in these revisions, and have made clear in previous rulemakings (See, e.g., 59 **Federal Register** 1472–73, March 25,

1994, 58 **Federal Register** 39339–41, July 22, 1993, and 51 **Federal Register** 27686, August 1, 1986) “services” are a metric for measuring resource conditions and resource restoration. They are not abstract functions that are disassociated from natural resources, and they are restored or replaced by actions related to the quality, quantity, or availability of natural resources.

## 2. Describing the Services-Based Approach

*Comment:* A few commenters suggested that to improve clarity and correct syntax, the description of the four types of restoration work (restoration, rehabilitation, replacement, or acquisition of equivalent resources) in § 11.80 should be described in two separate clauses.

*Response:* For the purpose of clarity, § 11.80 has been revised. Similar revisions have been made to §§ 11.81, 11.82, and 11.83.

## 3. Defining Services

*Comment:* One commenter suggested that DOI needs to emphasize that services include the full suite of human and ecological functions performed by natural resources.

*Response:* We believe the current definition of services in the rule includes both human and ecological services.

*Comment:* A few commenters said that the definition of “restoration or rehabilitation” in 43 CFR 11.14 needs to also be revised to reflect the services based approach, since it refers to actions that restore the physical, chemical, or biological properties of resources, as well as their services.

*Response:* The current definition of services in the rule, which remains unchanged, makes clear that services “result” from the physical, chemical, or biological quality of resources. Accordingly, we do not believe any revision is needed in the definition of “restoration or rehabilitation” to comport with the services-based approach.

## E. Assessment Process Timing Clarification

### 1. Consistent Timing Guidelines

*Comment:* All commenters who addressed this issue voiced support for technical corrections to provide consistent timing guidelines for completion of the Restoration and Compensation Determination Plan.

*Response:* This technical correction is included in the final rule.

## F. Deletion of the Bar on the Use of Contingent Valuation To Estimate Option and Existence Value To Comply With *Ohio v. Interior*

### 1. Technical Correction on Deleting the Bar on Estimating Option and Existence Value

*Comment:* All commenters who addressed this issue were supportive of this technical correction, which codifies an explicit ruling of the Ohio decision.

*Response:* This technical correction is included in the final rule.

## G. Deletion of the Date of Promulgation for the Statute of Limitation Provision To Comply With *Kennecott v. Interior*

### 1. Technical Correction To Strike Out Rule Promulgation Date

*Comment:* All commenters who addressed this issue were supportive of this technical correction, which codifies an explicit ruling of the *Kennecott* decision.

*Response:* This technical correction is included in the final rule.

## H. Miscellaneous Comments

### 1. Consideration of Damages for Compensable Values Pending Restoration Should Be Mandatory, not Discretionary

*Comment:* One commenter said that damages for public losses pending restoration should be mandatory, not discretionary as set forth in the existing rule.

*Response:* This is beyond the scope of the current revisions. The current rule grants broad discretion to trustees on formulating and pursuing claims.

### 2. Cultural Resources

*Comment:* One commenter expressed concern that the rule revisions would hinder trustees seeking recoveries for the value of cultural natural resource services lost as the result of natural resource injury.

*Response:* Cultural, religious, and ceremonial losses that rise from the destruction of or injury to natural resources continue to be cognizable under the revisions. The revisions do not affect the treatment of these losses under the rule.

### 3. Terminology—Monetary Damages

*Comment:* One commenter suggested that the preamble should distinguish restoration-based approaches from monetary damages for the economic value of losses, rather than from “economic” approaches, since some restoration-based approaches are economic methodologies.

*Response:* The revised preamble to this final rule utilizes the more precise

terminology of “monetary damages for the economic value of public losses”.

### 4. General Support for the Concept of Natural Resource Damages

*Comment:* One commenter voiced general support for the concept of damages to restore natural resources injured by releases of hazardous substances or oil.

*Response:* We acknowledge the comment, and believe that the revisions will improve the NRDAR practice and encourage quicker, more effective, and more efficient restoration of injured natural resources.

## V. How We Have Complied With Rulemaking Requirements

### Regulatory Planning and Review Under E.O. 12866

The Office of Management and Budget has reviewed these revisions. The revisions are a significant regulatory action under E.O. 12866 because the rule will raise novel legal or policy issues. The revisions clarify that trustees have the option of calculating total damages using the cost of restoration actions that compensate for losses, rather than requiring a two-part process where natural resource damages are calculated using the cost of restoration actions, and public losses pending restoration are calculated using the monetary economic value of the loss.

These revisions do not fall under other criteria in E.O. 12866:

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The regulations we are revising apply only to natural resource trustees by providing technical and procedural guidance for the assessment of natural resource damages under CERCLA and the Clean Water Act. The revisions are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. It does not directly impose any additional cost.

In fact, the revisions should assist in reducing natural resource damage assessment transaction costs by allowing trustees to utilize simpler and more transparent methodologies to assess damages when appropriate. The revisions do not sanction or bar the use of any particular methodology, so long as it meets the acceptance criteria for relevance and cost effectiveness that are set out in the rule.

We also believe that in many cases an early focus on feasible restoration and appropriate restoration actions, rather than on the monetary value of public

losses, can result in less contention and litigation, and faster, more cost-effective restoration. Meanwhile, existing criteria in the rule for evaluating restoration alternatives—including cost effectiveness—remain intact (see 43 CFR 11.82(d)). The likely result will be the encouragement of settlements, less costly and timelier restoration, and reduced transaction costs. To the extent any are affected by the revisions, it is anticipated that all parties will benefit by the increased focus on restoration in lieu of monetary damages.

b. The revisions will not create inconsistencies with other agencies' action. The general approach to losses pending restoration set forth in this rule is consistent with the OPA regulations. Both allow for basing damages on the cost of restoration actions to address public losses associated with natural resource injuries.

#### *Regulatory Flexibility Act*

We certify that this rule revision 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) (see section on E.O. 12866 above for discussion of potential economic effects.)

#### *Small Business Regulatory Enforcement Fairness Act*

This rule revision is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule revision:

(a) Does not have an annual effect on the economy of \$100 million or more (see section on E.O. 12866 above for discussion of potential economic effects.)

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions (see section on E.O. 12866 above for discussion of potential economic effects.)

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see section on E.O. 12866 above for discussion of potential economic effects.)

#### *Unfunded Mandates Reform Act*

This rule revision does not mandate any actions. The existing regulations do not require trustees to conduct assessment or pursue damage claims, and trustees who choose to conduct assessments and pursue damage claims are not required to do so in a manner

described in the regulations. The revisions do not change the optional nature of the existing regulations. The revisions themselves do not replace existing procedures; they merely clarify that trustees have the option of employing other procedures. Therefore, this rule revision will not produce a Federal mandate of \$100 million or greater in any year.

#### *Takings Analysis Under E.O. 12630*

A takings implication assessment is not required by E.O. 12630 because no party can be compelled to pay damages for injury to natural resources until they have received "due process" through a legal action in federal court. This rule and the revisions merely provide a framework for assessing injury and developing the claim.

#### *Federalism Analysis Under E.O. 12612*

E.O. 12612 requires federal agencies to consult with elected state officials before issuing rules that have "federalism implications" and either impose unfunded mandates or preempt state law. A rule has federalism implications if it has "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." This rule and the revisions do not require state trustees to take any action; therefore it does not impose any unfunded mandates. The rule and the revisions do not preempt state law. The rule and the revisions have no significant effect on intergovernmental relations because they do not alter the rights and responsibilities of government entities. Therefore, a federalism summary impact statement is not required under section 6 of the Order.

#### *Civil Justice Reform Under E.O. 12988*

Our Office of the Solicitor has determined that the revisions do not unduly burden the judicial system and meet the requirements of section 3(a) and 3(b)(2) of the Order. The revisions are intended to provide the option for an early focus on restoration, utilization of simpler and more cost-effective assessment methodologies, and increased opportunities for cooperation among trustees and potentially responsible parties. This should minimize litigation.

#### *Paperwork Reduction Act*

The revisions do not pose "identical questions" to, or impose "identical reporting, record keeping, or disclosure requirements," on trustees. Therefore, the revisions do not include an

"information collection" governed by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

#### *National Environmental Policy Act*

We have analyzed the revisions in accordance with the criteria of the National Environmental Policy Act, 43 U.S.C. 433 *et seq.* (NEPA). Restoration actions identified through the revisions may sometimes involve major federal actions significantly affecting the quality of the human environment. In those cases, federal trustees will need to comply with NEPA. However, the revisions do not require trustees to take restoration action. Further, if the trustees decide to pursue restoration, they are not required to follow the rule when selecting restoration actions. Finally, the rule and the revisions do not determine the specific restoration actions that trustees can seek. Therefore, the rule and the revisions do not significantly affect the quality of the human environment. Even if the rule revisions were considered to significantly affect the quality of the human environment, they would fall under DOI's categorical exclusion for regulations that are of a procedural nature or have environmental effects too broad or speculative for meaningful analysis and will be subject later to the NEPA process.

#### **List of Subjects in 43 CFR Part 11**

Natural resources, environmental protection.

Dated: September 25, 2008.

**James E. Cason,**

*Associate Deputy Secretary.*

■ For the reasons given in the preamble, we are amending part 11 of title 43 of the Code of Federal Regulations as follows:

#### **PART 11—NATURAL RESOURCE DAMAGES FOR HAZARDOUS SUBSTANCES**

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 42 U.S.C. 9651(c), as amended.

■ 2. In § 11.31, revise paragraph (c)(4) to read as follows:

#### **§ 11.31 What does the assessment plan include?**

\* \* \* \* \*

(c) \* \* \*

(4) The Restoration and Compensation Determination Plan developed in accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the

Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

\* \* \* \* \*

■ 3. In § 11.38, revise paragraph (c)(2)(i) to read as follows:

**§ 11.38 Assessment Plan—preliminary estimate of damages.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, *i.e.*, between the occurrence of the discharge or release and the completion of (A) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (B) the replacement and/or acquisition of equivalent natural resources capable of providing such services. The estimate should use the same base year as the preliminary estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.80–11.84 of this part are the basis for the development of this estimate.

\* \* \* \* \*

■ 4. In § 11.80, revise paragraph (b) to read as follows:

**§ 11.80 Damage Determination Phase—general.**

\* \* \* \* \*

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injuries to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of (i) restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. Damages may also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public

for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

\* \* \* \* \*

■ 5. In § 11.81, revise paragraph (a) to read as follows:

**§ 11.81 Damage Determination Phase—Restoration and Compensation Determination Plan.**

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services, and, where relevant, the compensable value; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, and, where relevant, the compensable value.

\* \* \* \* \*

■ 6. In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c) to read as follows:

**§ 11.82 Damage Determination Phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.**

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the baseline restoration, rehabilitation, replacement,

and/or acquisition of equivalent natural resources. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) \* \* \*

(1) \* \* \*

(iii) Possible alternatives are limited to those actions that (i) restore or rehabilitate the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) replace and/or acquire equivalent natural resources capable of providing such services.

\* \* \* \* \*

(c)(1) The possible alternatives considered by the authorized official that return the injured resources to their baseline level of services could range from intensive action on the part of the authorized official to return the various resources and services provided by those resources to baseline conditions as quickly as possible, to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combinations of management actions, and needs for resource replacements or acquisitions.

\* \* \* \* \*

■ 7. In § 11.83, revise paragraph (a)(1), add new paragraphs (a)(4) and (a)(5), and revise paragraph (c) to read as follows:

**§ 11.83 Damage Determination Phase—cost estimating and valuation methodologies.**

(a) *General.* (1) This section contains guidance and methodologies for determining: The costs of the selected alternative for (i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline, or (ii) the replacement and/or acquisition of equivalent natural resources capable of providing such services; and the compensable value of the services lost to the public through the completion of the baseline restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

\* \* \* \* \*

(4) Factors that may be considered by trustees to evaluate the feasibility and reliability of methodologies can include:

(i) Is the methodology capable of providing information of use in determining the restoration cost or compensable value appropriate for a particular natural resource injury?

(ii) Does the methodology address the particular natural resource injury and

associated service loss in light of the nature, degree, and spatial and temporal extent of the injury?

(iii) Has the methodology been subject to peer review, either through publication or otherwise?

(iv) Does the methodology enjoy general or widespread acceptance by experts in the field?

(v) Is the methodology subject to standards governing its application?

(vi) Are methodological inputs and assumptions supported by a clearly articulated rationale?

(vii) Are cutting edge methodologies tested or analyzed sufficiently so as to be reasonably reliable under the circumstances?

(5) All of the above factors may not be applicable to every case, and other factors may be considered to evaluate feasibility and reliability. The authorized official shall document any consideration of factors deemed applicable in the Report of Assessment.

\* \* \* \* \*

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided

by the injured resources between the time of the discharge or release and the time the resources are fully returned to their baseline conditions, or until the resources are replaced and/or equivalent natural resources are acquired. The compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence and bequest values. Economic value can be measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by a Federal or State agency or an Indian tribe for a private party's use of the natural resources; and any economic rent accruing to a private party because the Federal or State agency or Indian tribe does not charge a fee or price for the use of the resources. Alternatively, compensable value can be determined utilizing a restoration cost approach, which measures the cost of implementing a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(i) Use value is the economic value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the economic value the public derives from natural resources that is independent of any direct use of the services provided.

(iii) Restoration cost is the cost of a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(2) *Valuation methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate appropriate compensation for lost services or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count or uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

| Type of Methodology   | Description   |
|---|---|
| (i) Market price .....  | The authorized official may determine the compensable value of the injured resources using the diminution in the market price of the injured resources or the lost services. May be used only if:<br>(A) The natural resources are traded in the market; and<br>(B) The authorized official determines that the market for the resources, or the services provided by the resources, is reasonably competitive.   |
| (ii) Appraisal .....  | The measure of compensable value is the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards. Must measure compensable value, to the extent possible, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisition," Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18). |
| (iii) Factor income (sometimes referred to as the "reverse value added" methodology). | May be used only if the injured resources are inputs to a production process, which has as an output a product with a well-defined market price. May be used to determine: (A) The economic rent associated with the use of resources in the production process; and (B) The in-place value of the resources.   |
| (iv) Travel cost .....  | May be used to determine a value for the use of a specific area. Uses an individual's incremental travel costs to an area to model the economic value of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with and without a discharge or release. Regional travel cost models may be used, if appropriate.   |
| (v) Hedonic pricing .....   | May be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.   |
| (vi) Unit value/benefits transfer .....   | Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resources and unit values that closely resemble the recreational or other experience lost with the affected resources may be used.  |
| (vii) Contingent valuation .....  | Includes all techniques that set up hypothetical markets to directly elicit an individual's economic valuation of a natural resource. Can determine:<br>(A) Use values and explicitly determine option and existence values; and<br>(B) Lost use values of injured natural resources.   |
| (viii) Conjoint Analysis .....  | Like contingent valuation, conjoint analysis is a stated preference method. However, instead of seeking to value natural resource service losses in strictly economic terms, conjoint analysis compares natural resource service losses that arise from injury to natural resource service gains produced by restoration projects.  |
| (ix) Habitat Equivalency Analysis ...   | May be used to compare the natural resource services produced by habitat or resource-based restoration actions to natural resource service losses.  |
| (x) Resource Equivalency Analysis   | Similar to habitat equivalency analysis. This methodology may be used to compare the effects of restoration actions on specifically identified resources that are injured or destroyed.   |
| (xi) Random Utility Model .....   | Can be used to: (A) Compare restoration actions on the basis of equivalent resource services provided; and (B) Calculate the monetary value of lost recreational services to the public.  |

(3) *Other valuation methodologies.* Other methodologies that measure compensable value in accordance with the public's willingness to pay for the lost service, or with the cost of a project that restores, replaces, or acquires services equivalent of natural resource services lost pending restoration to baseline in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

\* \* \* \* \*

■ 8. In § 11.91, remove paragraph (e).

[FR Doc. E8-23225 Filed 10-1-08; 8:45 am]

BILLING CODE 4310-RG-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 08-2067; MB Docket No. 08-135; RM-11467]

#### Television Broadcasting Services; Freeport, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Gray Television Licensee, Inc., licensee of WIFR-DT, to substitute DTV channel 41 for DTV channel 23 at Freeport, Illinois.

**DATES:** The channel substitution is effective November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08-135, adopted September 8, 2008, and released September 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the

Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 303, 334, 336.

##### § 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Illinois, is amended by adding channel 41 and removing channel 23 at Freeport.

Federal Communications Commission.

**Clay C. Pendarvis,**

*Associate Chief, Video Division, Media Bureau.*

[FR Doc. E8-23157 Filed 10-1-08; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### 49 CFR Parts 1 and 89

[Docket No. DOT-OST-1999-6189]

RIN 9991-AA53

#### Organization and Delegation of Powers and Duties; Assistant Secretary for Budget and Programs

**AGENCY:** Office of the Secretary of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This amendment delegates debt collection, compromise,

suspension and termination authority under 31 U.S.C. 3711 (except with respect to Working Capital Fund claims) from the Secretary of Transportation (Secretary) to the Assistant Secretary for Budget and Programs by removing that authority from the Assistant Secretary for Administration and granting it to the Assistant Secretary for Budget and Programs. In addition, this rulemaking removes a reporting requirement related to the delegation.

**DATES:** This final rule is effective on October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Beth Kramer, Office of General Counsel, 1200 New Jersey Avenue, SE., Room W96-491, Washington, DC 20590, Telephone: (202) 366-0365.

**SUPPLEMENTARY INFORMATION:** Title 49 of the Code of Federal Regulations (CFR) 1.59(c)(6) and 89.5(a) delegate to the Assistant Secretary for Administration the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend or end collection action on claims of the United States not exceeding \$100,000 (excluding interest) arising out of the activities of, or referred to, the Office of the Secretary. The Secretary has determined that such authority (excluding authority to collect, compromise, suspend or end collection action on claims pertaining to the Working Capital Fund) should be delegated to the Assistant Secretary for Budget and Programs instead of the Assistant Secretary for Administration. This rulemaking makes the following changes to reflect the change in delegation:

- Adds "debt and" to 49 CFR 1.23(f);
- Adds a new paragraph (j) to 49 CFR 1.58;
- Adds language regarding the Working Capital Fund exclusion to 49 CFR 1.59(c)(6);
- Adds language regarding claims related to the Working Capital Fund to 49 CFR 89.5(a), renumbers subsection § 89.5(b) as § 89.5(c), and adds a new provision at § 89.5(b); and
- Removes ", reports," from the heading of § 89.15, adds "and the Assistant Secretary for Budget and Programs" to § 89.15(b)(1), removes § 89.15(b)(2), and renumbers paragraph (b)(3) as (b)(2).

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Department's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for

the final rule to be effective on the date of publication in the **Federal Register**.

**Regulatory Analyses and Notices**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

The final rule is not considered a significant regulatory action under Executive Order 12866 and DOT Regulatory Policies and Procedures (44 FR 11034). There are no costs associated with this rule.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

*C. Executive Order 13175*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*) do not apply. This rule imposes no costs on small entities because it simply delegates authority from one official to another. Therefore, it is certified that this final rule will not have a significant economic impact on a substantial number of small businesses.

*E. Paperwork Reduction Act*

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502–3520).

*F. Unfunded Mandates Reform Act*

The Department of Transportation has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

**List of Subjects**

*49 CFR Part 1*

Authority delegations (Government agencies), Organization and functions (Government agencies).

*49 CFR Part 89*

Claims, Delegations of authority, Reports.

■ For the reasons set forth in the preamble, the Office of the Secretary of Transportation amends parts 1 and 89 as follows:

**PART 1—[AMENDED]**

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

**Authority:** 49 U.S.C. 322; 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Public Law 101–552, 104 Stat. 2736; Public Law 106–159, 113 Stat. 1748; Public Law 107–71, 115 Stat. 597; Public Law 107–295, 116 Stat. 2064; Public Law 107–295, 116 Stat. 2065; Public Law 107–296, 116 Stat. 2135; 41 U.S.C. 414; Public Law 108–426, 118 Stat. 2423; Public Law 109–59, 119 Stat. 1144; Public Law 110–140, 121 Stat. 1492.

■ 2. In § 1.23, revise paragraph (f) to read as follows:

**§ 1.23 Spheres of primary responsibility.**

(f) *Assistant Secretary for Budget and Programs.* Preparation, review and presentation of Department budget estimates; liaison with OMB and Congressional Budget and Appropriations Committees; departmental financial plans, apportionments, reapportionments, reprogrammings, and allotments; program and systems evaluation and analysis; program evaluation criteria; program resource plans; analysis and review of legislative proposals and one-time reports and studies required by the Congress; budgetary and selected debt and administrative matters relating to the Office of the Secretary.

■ 3. In § 1.58, add a new paragraph (j) to read as follows:

**§ 1.58 Delegations to the Assistant Secretary for Budget and Programs.**

(j) Exercise the Secretary's authority under 31 U.S.C. 3711 to collect, compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) which are referred to, or arise out of the activities of, the Office of the Secretary (excluding claims pertaining to the Working Capital Fund).

■ 4. In § 1.59, revise paragraph (c)(6) to read as follows:

**§ 1.59 Delegations to the Assistant Secretary for Administration.**

\* \* \* \* \*

(c) \* \* \*

(6) Compromise, suspend collection action on, or terminate claims of the United States not exceeding \$100,000 (excluding interest) which are referred to, or arise out of the activities of, the Working Capital Fund.

\* \* \* \* \*

**PART 89—[AMENDED]**

■ 5. The authority citation for part 89 continues to read as follows:

**Authority:** Pub. L. 89–508; Pub. L. 89–365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701–3720A; Pub. L. 98–167; Pub. L. 98–369; Pub. L. 99–578; Pub. L. 101–552, 31 U.S.C. 3711(a)(2).

■ 6. In § 89.5 revise paragraph (a), redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

**§ 89.5 Delegations of Authority.**

\* \* \* \* \*

(a) The Assistant Secretary for Administration with respect to collection, compromise, suspension and termination of claims arising out of the activities of, or referred to, the Working Capital Fund;

(b) The Assistant Secretary for Budget and Programs with respect to collection, compromise, suspension and termination of collection of claims under 31 U.S.C. 3711 arising out of the activities of, or referred to, the Office of the Secretary (excluding claims pertaining to the Working Capital Fund); and

\* \* \* \* \*

■ 7. In § 89.15 revise the section heading, and paragraph (b) introductory text, remove paragraph (b)(2) and redesignate paragraph (b)(3) and (b)(2) to read as follows:

**§ 89.15 Regulations and supporting documentation.**

\* \* \* \* \*

(b) Each officer to whom authority is delegated under 89.5 shall furnish the following information to the Assistant Secretary for Administration and the Assistant Secretary for Budget and Programs:

\* \* \* \* \*

**Mary E. Peters,**

*Secretary of Transportation.*

[FR Doc. E8–22361 Filed 10–1–08; 8:45 am]

# Proposed Rules

Federal Register

Vol. 73, No. 192

Thursday, October 2, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 91

[Docket No. FAA-2007-29305; Notice No. 08-11]

RIN 2120-A192

#### Automatic Dependent Surveillance—Broadcast (ADS-B) Out Performance Requirements To Support Air Traffic Control (ATC) Service; Reopening of Comment Period

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

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

**SUMMARY:** On October 5, 2007, the FAA published a Notice of Proposed Rulemaking (NPRM) that proposed performance requirements for certain avionics equipment on aircraft operating in specified classes of airspace within the United States National Airspace System. The comment period closed on March 3, 2008. The FAA is reopening the comment period for an additional 30 days to give the public an opportunity to comment on recommendations received from an Aviation Rulemaking Committee established by the Administrator on July 15, 2007.

**DATES:** Comments must be received on or before November 3, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2007-29305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- *Fax:* Fax comments to Docket Operations at (202) 493-2251.

- *Hand Delivery:* Bring comments to Docket Operations 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 more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*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) or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Docket Operations 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:** Cindy Nordlie, ARM-108, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7627.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views on the ARC's recommendations. The most helpful comments reference a specific portion of the recommendation and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. We will consider all comments we

receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay.

#### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Federal eRulemaking Portal at <http://www.regulations.gov>;

- (2) Visiting the Office of Rulemaking's Web page at <http://www.faa.gov/avr/arm/index.cfm>; or

- (3) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

#### Background

On October 5, 2007, the FAA published Notice No. 07-15, Automatic Dependent Surveillance—Broadcast (ADS-B) Out performance requirements to support Air Traffic Control (ATC) service (72 FR 56947; Oct. 5, 2007). Comments to that document were to be received on or before January 3, 2008. On November 19, 2007, the FAA extended the comment period until March 3, 2008 (72 FR 64966).

On July 15, 2007, the Administrator established the ADS-B Aviation Rulemaking Committee (ARC). The ADS-B ARC provides a forum for the U.S. aviation community to discuss and review the ADS-B NPRM, formulate recommendations on presenting and structuring an ADS-B mandate, and consider additional actions that may be necessary to implement those recommendations. On September 26, 2008, pursuant to its responsibilities under the charter, the ADS-B ARC submitted to the FAA specific recommendations addressing the NPRM. These ARC recommendations have been placed in the docket.

To give the public an opportunity to comment on the recommendations received from the ARC, the FAA is reopening the comment period for an additional 30 days. The purpose of the comment period is to receive public

comments on the ARC recommendations; the FAA is not reopening the comment period on the NPRM.

Issued in Washington, DC, on September 29, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8-23199 Filed 10-1-08; 8:45 am]

BILLING CODE 4910-13-P

## SUSQUEHANNA RIVER BASIN COMMISSION

### 18 CFR Part 806

#### Review and Approval of Projects

**AGENCY:** Susquehanna River Basin Commission.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) by requiring review and approval of any natural gas well development project targeting the Marcellus, Utica or other shale formations and involving the withdrawal or consumptive use of waters of the Susquehanna River Basin, adding a provision providing for a specific approval by rule process for consumptive water use associated with such projects and modifying the definition of project. In addition, two editorial changes are made to the existing approval by rule provision related to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

**DATES:** Public hearings will be held on October 21 and October 22, 2008, beginning at 7 p.m. regarding this proposed rulemaking action. The locations of the hearings are listed in the **ADDRESSES** section of this notice. The deadline for submission of written comments on the proposed rulemaking is October 31, 2008.

**ADDRESSES:** The October 21 2008, public hearing will be held at Lycoming College, Academic Center, Lecture Hall Room D001, Mulberry Street, Williamsport, PA 17701; the October 22, 2008, public hearing will be held at Binghamton University, State University of New York, Lecture Hall Complex, Lecture Hall 1, Route 434 (Vestal Parkway East), Binghamton, NY 13903. Written comments may be submitted by

mail to Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391 or by e-mail to [rcairo@srbc.net](mailto:rcairo@srbc.net).

#### FOR FURTHER INFORMATION CONTACT:

Richard A. Cairo, General Counsel, 717-238-0423; Fax: 717-238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's Web site at [www.srbc.net](http://www.srbc.net).

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose of Amendments

As a result of advances in hydraulic fracturing, and higher natural gas prices, natural gas well development activity in the Susquehanna River Basin has increased dramatically in the past year, resulting in a large number of project applications being filed with the Commission seeking approval for the withdrawal and consumptive use of water for that activity. The Commission is hereby proposing a rulemaking action to handle the large and immediate influx of project applications, and to avoid adverse, cumulative adverse or interstate effects to the water resources of the basin.

The proposed rule modifies the definition of "project" for purposes of natural gas well development, requires review and approval of any natural gas well development project involving the withdrawal or consumptive use of water, and adds a specific approval by rule process associated with the consumptive use of water by such projects. The Commission's current approval by rule process is available for use only if the sole source of water is a public water supply system. Under the contemplated rule change, the approval by rule process would allow for the consumptive use of wastewater, acid mine water and other sources of water for natural gas well development projects. The proposal would not change the current process used to review groundwater or surface water withdrawals.

In addition, two editorial changes are made to the existing approval by rule provision relating to the consumptive use of water withdrawn from public water supply systems to make that provision consistent with the new approval by rule provision for natural gas well development projects.

##### List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

For the reasons set forth in the preamble, the Susquehanna River Basin

Commission proposes to amend 18 CFR part 806 as follows:

## PART 806—REVIEW AND APPROVAL OF PROJECTS

### Subpart A—General Provisions

1. The authority citation for part 806 continues to read as follows:

**Authority:** Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

2. In § 806.3, revise the definition of "project" to read as follows:

#### § 806.3 Definitions.

\* \* \* \* \*

*Project.* Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of natural gas well development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

\* \* \* \* \*

3. In § 806.4, amend paragraph (a) by adding paragraph (a)(8) to read as follows:

#### § 806.4 Projects requiring review and approval.

(a) \* \* \*

\* \* \* \* \*

(8) Any natural gas well development project in the basin targeting the Marcellus, Utica or other shale formations for exploration or production of natural gas involving a withdrawal or consumptive use of waters of the basin, regardless of the quantity of such withdrawal or consumptive use. The project sponsor shall submit the appropriate application(s) in accordance with subpart B of this part and the project shall be subject to the applicable standards set forth in subpart C of this part.

\* \* \* \* \*

4. In § 806.22, revise paragraph (e)(1) introductory text, (e)(1)(ii), and add a new paragraph (f) to read as follows:

#### § 806.22 Standards for consumptive uses of water.

\* \* \* \* \*

(e) \* \* \*

(1) Except with respect to projects involving natural gas well development subject to the provision of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) \* \* \*

(ii) Within 10 days after submittal of an NOI under paragraph (e)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

\* \* \* \* \*

(f) Approval by rule for consumptive use related to natural gas well development.

(1) Any project involving the development of natural gas wells subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part shall be subject to review and approval under this paragraph (f) regardless of the source or sources of water being used consumptively.

(i) Notification of Intent: No fewer than 60 days prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under paragraph (f)(1)(i) of this section, the project sponsor shall submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this approval by rule, which contains a sufficient description of the project, its purposes and location and the sources, quantities and peak day use of water to be used consumptively by the project. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) The project sponsor shall comply with metering, daily use monitoring and

quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water and fluids, including additives, flowback and brines, utilized by the project.

(3) The standard conditions set forth in § 806.21 above shall apply to projects approved by rule, as well as any special conditions incorporated into such approvals.

(4) The project sponsor shall comply with mitigation in accordance with § 806.22(b)(2) or (b)(3).

(5) Any produced flowback fluids or brines utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(6) The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (f) if the project sponsor fails to obtain or maintain such approvals.

(7) The project sponsor shall demonstrate to the satisfaction of the Commission that all flowback and produced fluids, including brines, have been treated and disposed of in accordance with applicable state and federal law.

(8) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved.

(9) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire five years from the date of such notification, and rescind any previous consumptive use approvals to the extent applicable to the project.

(10) Water withdrawals approved by the Commission pursuant to § 806.4(a)(2) after the date of issuance of the approval by rule may be utilized as a source for the consumptive use authorized for the project provided such withdrawal source is approved for such use and is registered with the Commission at least 10 days prior

thereto on a form and in a manner as prescribed by the Commission.

(11) Approvals issued under this paragraph (f) shall not be transferable under § 806.6.

Dated: September 16, 2008.

**Thomas W. Beauduy,**  
Deputy Director.

[FR Doc. E8-22805 Filed 10-1-08; 8:45 am]

BILLING CODE 7040-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2008-0659, FRL-8723-8]

### Approval and Promulgation of Implementation Plans; New Jersey; Diesel Idling Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan revision submitted by New Jersey to revise its rules regarding the idling of diesel-powered vehicles. Specifically, the State's implementation plan revision revises the exceptions to and exemptions from the State's existing three-minute idling rule. The intended effect of this action is to approve, as consistent with section 110(a)(2) of the Clean Air Act, a control strategy that will help New Jersey achieve attainment of the National Ambient Air Quality Standards for ozone and fine particulate matter.

**DATES:** Comments must be received on or before November 3, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2008-0659, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [Werner.Raymond@epa.gov](mailto:Werner.Raymond@epa.gov).

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional

Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R02-OAR-2008-0659. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket

Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Matthew Laurita, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3895.

**SUPPLEMENTARY INFORMATION:**

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**I. Description of the State Implementation Plan (SIP) Revision**

**A. What did New Jersey submit?**

On July 2, 2007, New Jersey promulgated amendments to Title 7, Chapter 27, Subchapter 14, "Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles," of the New Jersey Administrative Code, that limits the amount of time that engines of diesel-powered motor vehicles may idle. New Jersey's original diesel idling rule, adopted on December 2, 1985, prohibits any person from allowing the engine of a diesel-powered motor vehicle to idle for more than three consecutive minutes. However, it also provides exceptions to and exemptions from the three-minute limit. New Jersey's July 2007 rule revision adds, deletes, and revises certain exceptions and exemptions, with the overall goal of further limiting air emissions from idling diesel-powered vehicles within New Jersey. This revised rule became operative on July 25, 2007. On September 13, 2007, New Jersey submitted its revised diesel idling rule to EPA for approval as a SIP revision.

New Jersey's original diesel idling rule provided two exceptions to the three-minute limit: When at an operator's place of business, a diesel vehicle was allowed to idle for up to 30 minutes; and when a diesel vehicle's engine had been stopped for three or more hours, the vehicle was allowed to idle for up to 15 minutes. New Jersey's revised rule deletes the first exception and revises the second, so that the 15-minute limit only applies when the ambient temperature is below 25 degrees Fahrenheit. In addition, New Jersey adopted a new exception, to allow a diesel bus that is actively discharging or picking up passengers to idle for 15 consecutive minutes in a 60-minute period.

New Jersey's rule also initially contained eight exemptions to the three-minute idling limit. Diesel vehicles

were exempt from the three-minute limit when engaged in the following: discharging or picking up passengers; idling in traffic; idling to provide power to auxiliary equipment (except heating or air conditioning systems); idling while being or waiting to be examined by a motor vehicle inspector; actively performing emergency services; undergoing repair or service; connecting or detaching trailers; or, for diesel vehicles equipped with sleeper berths, while the sleeper berth was being used for rest, unless the vehicle had an auxiliary power system to maintain cabin comfort or assist with cold-weather starting.

In its revised rule, New Jersey removed the exemption for picking up and discharging passengers, replacing it with a 15-minute idling limit (see above), and removed the exemption for connecting or detaching trailers. New Jersey also clarified that a diesel vehicle being repaired or serviced may idle only if operation of the engine is essential to the repair or service being performed. New Jersey is also limiting the sleeper berth exemption by removing this exemption for any vehicle not equipped with either a 2007 or newer engine or an older engine retrofitted with a properly functioning diesel particulate filter. The revised sleeper berth exemption becomes effective on May 1, 2010. However, the Commissioner of the New Jersey Department of Environmental Protection may delay the effective date of this revised exemption for up to one year, if it is determined that public safety would be adversely affected if the exemption were to take effect on May 1, 2010. Finally, New Jersey adopted a new exemption allowing technologies designed to reduce idling (such as auxiliary power units, generator sets, or bunk heaters) to operate provided the diesel vehicle's main engine is not idling.

In addition to the new and revised exemptions, New Jersey adopted a new provision prohibiting a diesel vehicle from idling for more than three minutes when parked in a space with available electrification technology, which is defined as " \* \* a technology that harnesses an off-vehicle electrical system to provide a vehicle with climate control and other needs." There are no exemptions from this provision.

**B. What is EPA's evaluation of New Jersey's SIP revision submittal?**

EPA has evaluated New Jersey's SIP revision submittal (described above), including the comments and responses New Jersey received during its public process. EPA has determined that New Jersey adequately addressed the

comments received and that New Jersey's revised diesel idling rule is enforceable and approvable as a control strategy to attain and maintain the national ambient air quality standards, as consistent with section 110(a)(2) of the Clean Air Act, 42 U.S.C. 7410(a)(2).

## II. Proposed EPA Action

EPA is proposing to approve the revisions to New Jersey's diesel idling rule as part of New Jersey's ozone and particulate matter SIPs.

## III. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would

be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: September 19, 2008.

**Alan J. Steinberg,**

*Regional Administrator, Region 2.*

[FR Doc. E8-23246 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA-HQ-OAR-2005-0161; FRL-8723-4]

RIN 2060-AO80

### Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to take action on amendments to the Renewable Fuel Standard program requirements. Following publication of the final rule promulgating the Renewable Fuel Standard regulations, EPA discovered a number of technical errors and areas within the regulations that could benefit from clarification or modification. This proposed rule would amend the regulations to make the appropriate corrections, clarifications and modifications. In the "Rules and Regulations" section of this **Federal Register**, we are amending the Renewable Fuel Standard program requirements as a direct final rule without a prior proposed rule. If we

receive no adverse comment, we will not take further action on this proposed rule.

**DATES:** Written comments must be received by November 3, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0161, by mail to Air and Radiation Docket, Docket No. EPA-HQ-OAR-2005-0161, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

### FOR FURTHER INFORMATION CONTACT:

Megan Brachtl, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343-9473; fax number: (202) 343-2802; e-mail address: [brachtl.megan@epa.gov](mailto:brachtl.megan@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on amendments to the Renewable Fuel Standard program requirements. We have published a direct final rule which amends the Renewable Fuel Standard program requirements in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. If we receive adverse comment on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on the date set out above, notwithstanding adverse comment on any other provision.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information

provided in the **ADDRESSES** section of this document.

## II. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the

production, distribution and sale of gasoline motor fuel or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

| Category       | NAICS codes <sup>a</sup> | SIC codes <sup>b</sup> | Examples of potentially regulated parties              |
|----------------|--------------------------|------------------------|--|
| Industry ..... | 324110                   | 2911                   | Petroleum refiners, importers.                         |
| Industry ..... | 325193                   | 2869                   | Ethyl alcohol manufacturers.                           |
| Industry ..... | 325199                   | 2869                   | Other basic organic chemical manufacturers.            |
| Industry ..... | 424690                   | 5169                   | Chemical and allied products merchant wholesalers.     |
| Industry ..... | 424710                   | 5171                   | Petroleum bulk stations and terminals.                 |
| Industry ..... | 424720                   | 5172                   | Petroleum and petroleum products merchant wholesalers. |
| Industry ..... | 454319                   | 5989                   | Other fuel dealers.                                    |

<sup>a</sup>North American Industry Classification System (NAICS).

<sup>b</sup>Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

## III. What Should I Consider as I Prepare My Comments for EPA?

**A. Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

**B. Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**C. Docket Copying Costs.** You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

## IV. Renewable Fuel Standard Program Amendments

Following publication of the final Renewable Fuel Standard (RFS) program regulations (72 FR 23900, May 1, 2007), EPA discovered a number of areas within the RFS regulations at 40 CFR Part 80, Subpart K that were in error, were unclear, or otherwise could benefit from modification. We have attempted to clarify some ambiguities in our Question and Answer document for the RFS program.<sup>1</sup> However, in some cases we believe it is appropriate to modify the regulations. As a result, we are proposing to make the following amendments to the RFS regulations in Subpart K.

### A. Summary of Amendments

Below is a table listing the provisions that we are proposing to amend. Many of the amendments address grammatical or typographical errors, or provide minor clarifications. A few amendments are being made in order to assist regulated entities in complying with the RFS program requirements and to lessen regulatory requirements where possible without compromising the goals of the RFS program. We have provided additional explanation for several of these amendments in sections IV.B through IV.H below.

<sup>1</sup> See "Questions and Answers on the Renewable Fuel Standard Program" at <http://www.epa.gov/otaq/renewablefuels/index.htm#comp>.

## RFS PROGRAM AMENDMENTS

| Section  | Description  |
|--|--|
| 80.1101(d)(2) .....                                      | Corrected typographical error.   |
| 80.1101(d)(3) .....                                      | Clarified that no more than 5 volume percent denaturant may be included in the volume of ethanol produced, imported or exported for purposes of determining compliance with the requirements under this subpart. See Section IV.B.   |
| 80.1107(c) .....   | Clarified that the gasoline products to be included in an obligated party's Renewable Volume Obligation (RVO) calculation should not be double-counted.  |
| 80.1126(a)(1) .....                                      | Clarified that this provision pertains to Renewable Identification Number (RIN) generation, not RIN transfers.   |
| 80.1126(b) .....   | Clarified that renewable fuel producers that are below the 10,000 gallon threshold are exempt from the attest engagement requirements in 80.1164 as well as other reporting and recordkeeping requirements.  |
| 80.1126(d)(1) .....                                      | Clarified that the RIN that must be generated for each batch of renewable fuel that is produced or imported is a "batch-RIN."  |
| 80.1127(b)(2) .....                                      | Corrected typographical error in deficit carryover equation.   |
| 80.1128(a)(5) (ii) and (iii); removed (a)(5) (iv) & (v). | Revised this paragraph to allow parties to use an equivalence value of 2.5 RINs per gallon for any renewable fuel for purposes of calculating the end-of-quarter check. See Section IV.C.  |
| 80.1128(a)(6); removed (a)(7) .....                      | Deleted. Based on experience with the program to date, we believe this requirement is not necessary to fulfill the goals of the program. See Section IV.D. (§ 80.1128(a) has also been renumbered to adjust for this change.)  |
| 80.1129(b)(1) and (b)(8) .....                           | Revised to clarify that a party with a small refinery or small refiner exemption may only separate RINs that have been assigned to a volume of renewable fuel that the party blends into motor vehicle fuel.   |
| 80.1129(b)(2) .....                                      | Revised to clarify that up to 2.5 gallon-RINs may be separated when a volume of renewable fuel is blended into gasoline.   |
| 80.1129(b)(4) .....                                      | Revised to allow any party to separate the RINs from renewable fuel that it produces or markets for use in motor vehicles in neat form, or uses in motor vehicles in neat form. An oversight in the current regulations only allows this for renewable fuel producers and importers.   |
| 80.1129(b)(6) .....                                      | Revised to provide that this provision applies only to neat fuel for which an obligated party generates RINs. See Section IV.E.  |
| 80.1129(d) .....   | Revised to delete the requirement that a separated RIN may not be transferred on a product transfer document that is used to transfer a volume of renewable fuel, since it will be clear from other information required on the product transfer document whether or not any assigned RINs have also been transferred with the fuel.   |
| 80.1131(a)(8); removed (b)(4) .....                      | Moved the text in paragraph (b)(4) to a new paragraph (a)(8) in order to clarify that a RIN that is transferred to two or more parties is considered an invalid RIN.   |
| 80.1132(a), (b) and (c) .....                            | Revised to clarify that the requirements of § 80.1132 apply to fuel that has been disposed of as well as fuel that has been spilled. See Section IV.F.   |
| 80.1141(a)(1), 80.1142(a)(1) .....                       | Amended to clarify that a refinery with an approved small refinery exemption or a refiner with a small refiner exemption is exempt from requirements that apply to obligated parties during the period of time that the small refinery or small refiner exemption is in effect.  |
| 80.1141(a)(1) .....                                      | Corrected calendar year reference.   |
| 80.1141(a)(4), 80.1142(a)(4) .....                       | Revised to clarify that the small refinery and small refiner exemptions only apply to refineries or refiners that process crude oil, or feedstocks derived from crude oil, through refinery processing units.  |
| 80.1141(b)(2)(ii) .....                                  | Revised in order to clarify that small refinery status can be transferred with the sale of a refinery. Section 80.1141(b)(2)(ii) currently requires the owner of a small refinery to submit a letter stating that the company owned the refinery as of the applicable date for eligibility for small refinery status. This provision has been revised to require the letter only to state that the refinery was small as of the applicable date. Thus, any refinery that qualifies for small refinery status retains its status even if the refinery is sold to another company. |
| 80.1142(e) .....   | Revised to clarify that a refiner who is disqualified as a small refiner must notify EPA in writing no later than 20 days following the disqualifying event.   |
| 80.1151(a)(3)(i), (b)(4)(i) and (d)(3)(i).               | Deleted requirement to retain records of "expired RINs," since it is apparent when a RIN has expired from the date of the RIN and information regarding expired RINs is not required to be reported to EPA. See Section IV.G.  |
| 80.1152(c)(1) (iii) and (v), (c)(2) .....                | Deleted requirement to report "expired RINs," since it will be apparent when a RIN has expired from other information provided in the reports. Paragraph (c)(2) has also been renumbered. See Section IV.G. Deleted provisions relating to the submission of transaction and quarterly gallon-RIN reports on a facility-by-facility basis, since RIN trading activities are conducted on a company basis.  |
| 80.1153(a)(5) .....                                      | Revised to clarify the language required to be included on product transfer documents for transfers of fuel with no assigned RINs.   |
| 80.1154(a)(4) and (b) .....                              | Revised to clarify that producers who produce less than 10,000 gallons of renewable fuel per year are exempt from the attest engagement requirements as well as the other recordkeeping and reporting requirements.  |
| 80.1160(a), (b)(1), and (f) .....                        | Revised to clarify specific acts that are prohibited under the RFS program.  |
| 80.1164 .....  | Revised to clarify the attest engagement requirements, and, where possible, to modify the requirements to make them less burdensome. See Section IV.H.   |
| 80.1165, 80.1166, 80.1167 .....                          | Corrected typographical errors.  |

*B. Amount of Denaturant in Ethanol*

Section 80.1101(d)(3) specifies that ethanol must contain a denaturant to be

covered by the definition of "renewable fuel" under the RFS rule. For purposes of compliance with the RFS, a volume

of ethanol includes the volume of denaturant contained in the ethanol. Under § 80.1107(d), renewable fuel,

including denatured ethanol, is excluded from the volume of gasoline produced or imported for purposes of calculating an obligated party's RVO. Under § 80.1130, any denatured ethanol that is exported is included in the volume of renewable fuel exported for purposes of calculating the exporter's RVO. However, the regulations do not specify a maximum limit on the amount of denaturant that may be included in the volume of ethanol produced, imported or exported for purposes of these compliance calculations and other requirements under the RFS rule.

In promulgating the RFS regulations, we assumed that the amount of denaturant included in a volume of ethanol normally would not exceed the industry maximum specification under ASTM D-4806, which is 5 percent. Since the rule was published, it has come to our attention that larger amounts of gasoline are sometimes used in ethanol as a denaturant. We believe it is appropriate to limit the amount of gasoline in ethanol that may be counted as a denaturant to an amount that reflects the ASTM specification. As indicated above, under the current regulations, any volume of gasoline contained in ethanol as a denaturant is excluded from an obligated party's volume of gasoline produced or imported for purposes of calculating the party's RVO. As a result, an obligated party is not prohibited from adding large amounts of gasoline to imported ethanol to avoid including the gasoline in its RVO calculation, and, at the same time, increase the volume of renewable fuel for which RINs could be generated. Therefore, we are proposing to amend the RFS regulations to specify a limit of 5 volume percent denaturant that may be included in a volume of ethanol for purposes of determining compliance with requirements under the RFS rule.

#### *C. Equivalence Values for End-of-Quarter Check*

Section 80.1128(a)(5) provides that any party who owns assigned RINs must demonstrate that the sum of all assigned gallon-RINs that the party owns at the end of a quarter does not exceed the sum of all volumes of renewable fuel the party owns at the end of the quarter multiplied by their respective equivalence values. Section 80.1128(a)(4) allows a party to transfer to another party up to 2.5 assigned RINs per gallon of any renewable fuel. Therefore, in some cases, a party could receive fuel with more assigned RINs than would be calculated for that volume of fuel using its equivalence value. As a result, the party could be out of compliance with the end-of-quarter

check requirement in § 80.1128(a)(5), unless the party had enough fuel to sell with the excess RINs by the end of the quarter. For example, a marketer that receives a gallon of biodiesel with 2.5 assigned gallon-RINs must calculate compliance with § 80.1128(a)(5) based on the equivalence value of the biodiesel, which is 1.5. If this were the marketer's only transaction, the marketer would be out of compliance at the end of the quarter since he would have an excess of 1.0 assigned gallon-RINs. To remedy this situation, we are proposing to amend § 80.1128(a)(5) to allow an equivalence value of 2.5 to be used for any volume of renewable fuel for purposes of calculating compliance with the end-of-quarter check requirement in § 80.1128(a)(5).

#### *D. RIN Transfer Requirements for Producers and Importers*

The RFS program allows any party that receives assigned RINs with renewable fuel to thereafter transfer anywhere from zero to 2.5 gallon-RINs with each gallon of renewable fuel. This provision provides the flexibility to transfer more assigned RINs with some volumes and fewer assigned RINs with other volumes depending on the business circumstances of the transaction and the number of RINs that the seller has available.

However, this level of flexibility could contribute to short-term hoarding on the part of producers and importers of renewable fuel. As a result, we implemented a provision at § 80.1128(a)(6) that requires producers and importers to transfer assigned gallon-RINs with gallons such that the ratio of assigned gallon-RINs to gallons is equal to the equivalence value for the renewable fuel. In effect, this requires renewable fuel producers and importers to transfer every single batch of renewable fuel with all assigned RINs generated for that batch. We have interpreted this provision as applying only to producers and importers who only sell renewable fuel that they produce or import themselves. It does not apply to producers or importers that are also marketers of renewable fuel produced or imported by another party.

Since the start of the RFS program, there have been numerous circumstances in which parties who purchase renewable fuel from a producer or importer wanted to avoid the registration, recordkeeping, and reporting requirements of the program. To do this, they had to avoid taking ownership of RINs. In some cases the producer or importer has accommodated such parties by taking ownership of renewable fuel from

another party, thereby becoming a marketer who is not subject to § 80.1128(a)(6). However, this has not always been possible, and in such cases the purchaser has been forced to seek out alternative sources of renewable fuel. This latter outcome is inconsistent with one of our goals for the RFS program—structuring the program so it would have only a minimal effect on common business practices.

After further consideration, we do not believe that producers and importers of renewable fuel should be required to transfer all RINs generated with every batch of renewable fuel that is produced. Instead, we believe that it should be sufficient that they comply with the end-of-quarter check in § 80.1128(a)(5) and the restriction in that section on the number of gallon-RINs that can be transferred with each gallon. This change would recognize that most producers and importers can already avoid the limitations of § 80.1128(a)(6) by buying a small quantity of renewable fuel from another party and thereby becoming a marketer. The change would also have minimal impact on the transfer of RINs with volume, as producers and importers would be limited in the number of RINs they could hold onto given the end-of-quarter check. As a result, we are proposing to amend the regulations to delete the provisions contained in § 80.1128(a)(6).

#### *E. RINs That an Obligated Party Generates*

Section 80.1129(b)(1) provides that an obligated party must separate any RINs that have been assigned to a volume of renewable fuel that the obligated party owns. An exception to this requirement is provided in § 80.1129(b)(6) for obligated parties who also generate RINs. Under this section, an obligated party who generates RINs may separate such RINs from volumes of renewable fuel only up to the level of gallon-RINs of the party's RVO. The limitation in § 80.1129(b)(6) was included in the regulations to prevent a renewable fuel producer from importing a small amount of gasoline, which would qualify the producer as an obligated party, in order to separate the RINs from all of the renewable fuel that the party produced.

It has come to our attention that the limitation in § 80.1129(b)(6) may be problematic in situations where a party imports gasoline that contains renewable fuel. Under § 80.1126(d), RINs must be generated for any renewable fuel that is imported, including any renewable fuel contained in imported gasoline. For example, if a

party imports 100 gallons of E10, the party would be required to generate RINs for the volume of ethanol in the E10, which would be 10 gallon-RINs. The party also would calculate its RVO based on the applicable RFS standard, which for 2008 is 7.76%. The standard as applied to the gasoline part of the volume of imported E10 in the example would result in an RVO of 6.98 gallon-RINs ( $7.76\% \times 90$  gallons). Since the party would be able to separate RINs only up to the party's RVO, or 6.98 gallon-RINs, the party would have 3.02 assigned gallon-RINs which could not be separated. Under § 80.1128(a)(5), each party that owns assigned RINs must demonstrate that the party does not own more assigned gallon-RINs at the end of each quarter than the amount of renewable fuel in the party's inventory, multiplied by its equivalence value. In the example above, the party would own 3.02 assigned gallon-RINs at the end of the quarter, but would not have any renewable fuel in its inventory. As a result, the party would not be in compliance with the requirement in § 80.1128(a)(5).

To address this situation, this rule would modify the regulations to apply the limitation in § 80.1129(b)(6) only to neat renewable fuel for which the party generates RINs and not to renewable fuel already blended in gasoline. Thus, in the example above, the party would generate 10 gallon-RINs for the ethanol contained in the E10 and the party's RVO would be 6.98 gallon-RINs, but the party would be able to separate all of the 10 gallon-RINs from the fuel. The party then would have no assigned RINs at the end of the quarter and would not be in violation of the requirement in § 80.1128(a)(5). If the party in our example imported 100 gallons of non-ethanol gasoline and 10 gallons of neat renewable fuel, the party would generate 10 gallon-RINs, but could only separate RINs up to the party's RVO, which be 7.76 gallon-RINs ( $7.76\% \times 100$  gallons). As a result, the party would have 2.24 assigned gallon-RINs left, but would also have 10 gallons of renewable fuel in its inventory, and, therefore, the party would be in compliance with the requirement in § 80.1128(a)(5).

#### *F. Renewable Fuel That Has Been Disposed of*

Under § 80.1132, in the event of a spillage of renewable fuel that is required by a federal, state or local authority to be reported, the owner of the renewable fuel must retire an appropriate number of gallon-RINs. Since the RFS rule was promulgated, it has come to our attention that disposal of renewable fuel may also be required

to be reported to a government authority. We believe it is appropriate to treat such disposals of renewable fuel in the same manner as spillages of renewable fuel, since in both situations the fuel will not ultimately be used in motor vehicle fuel. As a result, we are proposing to amend § 80.1132 to apply to reportable disposals of renewable fuel as well as reportable spillages of renewable fuel.

#### *G. Elimination of Expired RIN Category*

Under § 80.1127(a)(3), RINs may only be used to demonstrate compliance with the RVO for the calendar year in which they were generated or the following year. Therefore, after two years, RINs have no value and are deemed to have expired. The regulations currently require information regarding expired RINs to be retained and included in the reports submitted to EPA. However, since EPA will know from the information contained in the RIN when the RIN was generated, EPA will also know when the RIN has expired. Therefore, we have determined that the requirements to retain records of expired RINs and to include information regarding expired RINs in the reports submitted to EPA are unnecessary, and, as a result, we are proposing to amend the regulations to eliminate the requirements to retain records and report information regarding expired RINs.

#### *H. Attest Engagements*

This rule proposes to make several revisions to the attest engagement provisions in § 80.1164 in order to correct minor technical errors, clarify the procedures required to be fulfilled by the attest auditor, and, where possible, revise the procedures to make them less burdensome without compromising the goals of the program. For audits of the obligated party compliance demonstration reports, the rule proposes to require the attest auditor to calculate the total number of RINs used for compliance by year of generation and reconcile that total with the information reported to EPA rather than calculating and reporting as a finding all RINs used for compliance. For audits of the RIN transaction and RIN activity reports, the rule proposes to clarify the type of documentation that is required to be provided to the attest auditor for purposes of verifying the information contained in the reports. The rule also proposes to require the attest auditor to review product transfer documents (PTDs) for a representative sample of RINs used for compliance and a representative sample of renewable fuel batches that any party sells to

another party. Under the current regulations, the auditor is required to review PTDs for each batch of renewable fuel produced or imported by a renewable fuel producer or importer, which we believe is unnecessarily burdensome, and does not require review of PTDs generated by other parties. In addition, the rule proposes to provide that the documentation required for the attest audit of the RIN activity reports must include, for owners of assigned RINs, the volume of renewable fuel owned at the end of the quarter in order to verify the accuracy of information relating to compliance with the end-of-quarter inventory check in § 80.1128(a)(5). The rule proposes to add a requirement that a company representative must provide the attest auditor with a written representation that the copies of the EPA reports provided to the auditor are complete and accurate copies of the reports. This is a requirement for attest procedures under other fuels programs and omission of this requirement in the RFS rule was an oversight. The rule also proposes to include a provision which requires the attest auditor to identify the commercial computer program used by the regulated party to track the data required for purposes of compliance with the RFS requirements.

#### **V. Relationship to the Energy Independence and Security Act of 2007**

The Energy Independence and Security Act of 2007 (EISA) amended Clean Air Act section 211(o) in many respects, including requiring a substantially greater volume of renewable fuel use in the future. EPA is currently developing implementing regulations for this new legislation. EISA also included language addressing the transition period between its enactment and the time when new regulations are promulgated. EISA Section 210(a)(2) provides that “[u]ntil January 1, 2009, the Administrator of the Environmental Protection Agency shall implement section 211(o) of the Clean Air Act and the rules promulgated under that section in accordance with the provisions of that section as in effect before the enactment of this Act and in accordance with the rules promulgated before the enactment of this Act,” with certain exceptions. EPA believes that the intent of this transition provision of EISA was to maintain the fundamental program components and requirements of the existing regulations, but that it does not limit EPA's ability to make minor programmatic changes that ease the administration and implementation of the current program. Accordingly, EPA views the changes proposed today

to the 211(o) regulations to be “in accordance” with the regulations in effect when EISA was enacted, and will implement the finalized regulations upon their effective date.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review. This proposed rule simply makes minor technical changes to the RFS regulations and modifies the requirements to make them less burdensome for regulated parties where possible.

### B. Paperwork Reduction Act

This action does not propose to impose any new information collection burden. This action proposes to make minor technical corrections to the regulations and modifies certain requirements to lessen the burden on related parties while maintaining the overall goals of the program. None of the changes in the rule require any additional information collection burdens. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 80, subpart K, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–

0600. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action proposes to make minor technical corrections to the regulations and modifies certain requirements to lessen the burden on regulated parties while maintaining the overall goals of the program. We have therefore concluded that today’s proposed rule will relieve regulatory burden for affected small entities.

### D. Unfunded Mandates Reform Act

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more

for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This action makes minor technical corrections to the RFS regulations and modifies certain provisions to lessen the requirements for regulated parties. As a result, this proposed rule will have the overall effect of reducing the burden of the RFS regulations on regulated parties. Thus, this proposal is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline and renewable fuel producers, importers, distributors and marketers and makes minor corrections and modifications to the RFS regulations.

### E. Executive Order 13132 (Federalism)

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

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes to make minor technical corrections and modifications to existing regulations in order to lessen the burden on related parties. Thus, Executive Order 13132 does not apply to this rule.

### F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline and renewable fuel producers, importers, distributors and marketers. This action makes minor corrections and modifications to the RFS regulations, and does not impose any

enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it would not establish an environmental standard intended to mitigate health or safety risks.

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

This proposal is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing,

as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These technical amendments do not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: September 25, 2008.

**Stephen L. Johnson,**

*Administrator.*

[FR Doc. E8–23130 Filed 10–1–08; 8:45 am]

**BILLING CODE 6560–50–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[DA 07–2854; MB Docket No. 07–125; RM–11375]**

**Radio Broadcasting Services; Oolitic, IN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Bruce Quinn, requesting the allotment of Channel 231A at Oolitic, Indiana. The coordinates for Channel 231A at Oolitic, Indiana, are 38–59–16 NL and 86–37–47 WL. There is a site restriction of 13.2 kilometers (8.2 miles) northwest of the community. Proposed Channel 231A is short-spaced to the licensed site of Station WQKC–FM, Channel 229B, Seymour, Indiana. However, Station WQKC–FM’s license was modified to specify operation on Channel 230A at Sellersburg, Indiana in MB Docket No. 03–98 and the FM Table of Allotments was amended to reflect this change. Therefore, no protection is afforded to this license site. A Petition for Reconsideration of the letter dismissal of this Petition is dismissed as moot.

**DATES:** Comments must be filed on or before November 3, 2008, and reply comments on or before November 17, 2008.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Bruce Quinn, 1217 Lafayette Avenue, Columbus, Indiana 47201.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s *Notice of Proposed Rulemaking*, MB Docket No. 07–125, adopted June 27, 2007, and released June 29, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or <http://www.BCPIWEB.com>. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Oolitic, Channel 231A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E8–23158 Filed 10–1–08; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 109

[Docket No. PHMSA–2005–22356]

RIN 2137–AE13

#### Hazardous Materials: Enhanced Enforcement Authority Procedures

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

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

**SUMMARY:** PHMSA is proposing to issue rules implementing certain inspection, investigation, and enforcement authority conferred on the Secretary of Transportation by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005. The proposed rules would establish procedures for: (1) The inspection and opening of packages to identify undeclared or non-compliant shipments; (2) the temporary detention and inspection of suspicious packages; and (3) the issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard. These new inspection and enforcement procedures will enhance DOT's ability to respond immediately and effectively to conditions or practices that pose serious threats to life, property, or the environment.

**DATES:** Comments must be received by December 1, 2008.

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

- *U.S. Government Regulations.gov*  
Web site: <http://www.regulations.gov>.

Use the search tools to find this rulemaking and follow the instructions for submitting comments.

- *U.S. Mail or private delivery service:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590–0001.

- *Fax:* 1–202–493–2251.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor 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:  
*Instructions:* You must include the agency name and docket number, PHMSA–05–22356 or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to the U.S. Government Regulations.gov Web site: <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Jackie K. Cho or Vincent M. Lopez, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under authority delegated by the Secretary of Transportation (Secretary), four agencies within DOT enforce the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180 and other regulations, approvals, special permits, and orders issued under Federal Hazardous Material Transportation Law (Hazmat Law), 49 U.S.C. 5101 *et seq.*; the Federal Aviation Administration (FAA), 49 CFR 1.47(j)(1); Federal Railroad Administration (FRA), 49 CFR 1.49(s)(1); Federal Motor Carrier Safety Administration (FMCSA), 49 CFR 1.73(d)(1); and Pipeline and Hazardous Materials Safety Administration (PHMSA), 49 CFR 1.53(b)(1). The Secretary has delegated authority to each respective operating administration to exercise the enhanced inspection and enforcement authority conferred by the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA). 71 FR 52751, 52753 (Sept. 7, 2006). The United States Coast Guard (USCG) is authorized to enforce the HMR in connection with certain transportation or shipment of hazardous materials by water. This authority originated with the Secretary and was

first delegated to USCG prior to 2003, when USCG was made part of the Department of Homeland Security. Enforcement authority over “bulk transportation of hazardous materials that are loaded or carried on board a vessel without benefit of containers or labels, and received and handled by the vessel without mark or count, and regulations and exemptions governing ship’s stores and supplies” was also transferred in 2003. DHS Delegation No. 0170.1(2)(103) & 2(104); *see also* 6 U.S.C. 458(b), 551(d)(2). The USCG inspects portable tanks and freight containers primarily under two laws: the Safe Container Act 46 U.S.C. 80501 *et seq.* with its implementing regulations found in 46 CFR 450–453, and 49 U.S.C Chapter 51 Transportation of Hazardous Material as it relates to waterborne transportation. DOT will coordinate its inspections, investigations, and enforcements aboard vessels and waterfront facilities, as defined in 33 CFR 126.3, with the USCG to avoid duplicative or conflicting efforts. Moreover, nothing proposed herein would affect USCG’s enforcement authority with respect to transportation of hazardous materials.

#### A. Need for Enhanced Enforcement Authority

Each year, about three billion tons of hazardous materials are transported in the United States. United States Government Accountability Office, Undeclared Hazardous Materials: New DOT Efforts May Provide Additional Information on Undeclared Shipments, GAO–06–471, at 9 (March 2006) (GAO Report). Under DOT-mandated safety standards, including suitable packaging and handling, nearly all of these shipments move through the system safely and without incident. When incidents do occur, DOT-mandated labels and other forms of hazard communication provide transportation employees and emergency responders the information necessary to mitigate the consequences. Together, these risk controls provide a high degree of protection. Yet their effectiveness depends largely on compliance by hazmat offerors, beginning with proper classification and packaging of hazardous materials. When a package containing hazardous materials is placed in transportation without regard to HMR requirements, the effectiveness of all other risk controls is compromised, increasing both the likelihood of an incident and the severity of consequences. Accordingly, we have long considered undeclared shipments of hazardous materials to be a serious safety issue. The HMR define

“undeclared hazardous material” as a material “offered for transportation in commerce without any visible indication to the person accepting the hazardous material for transportation that a hazardous material is present, on either an accompanying shipping document, or the outside of a transport vehicle, freight container, or package” that is subject to the hazardous materials communication standards. 49 CFR 171.8.

Approximately 1.2 million hazardous materials shipments are transported daily; of those, approximately 800,000 involve consolidations, intermodal, or intramodal transfers and in-transit storage. 68 FR at 67751 (Dec. 3, 2003). These figures do not include the unknown numbers of hazardous materials shipments that are undeclared and, accordingly, less readily accounted for. To detect and deter hidden shipments of hazardous materials, PHMSA’s predecessor agency amended the HMR in 2004 to require persons who discover shipments of undeclared hazardous materials to report these incidents to the agency. 49 CFR 171.16(a)(4). These requirements were intended, in part, to “define the extent of the problem, establish trends, and help gauge the effectiveness of efforts to reduce undeclared shipments.” 68 FR 67746, 67754. In 2005, offerors and carriers reported about 1,000 incidents of undeclared hazardous materials, 70 of which involved shipments entering the United States from abroad. GAO Report at 28.

FAA enforcement statistics show that undeclared hazardous materials are a frequent and persistent problem. In 1993, FAA reported 420 enforcement cases involving undeclared hazardous materials shipments. Seven years later, the number of such enforcement cases rose to 1,716.

Hidden hazardous materials pose a significant threat to transportation workers, emergency responders, and the general public. By definition, an undeclared shipment does not include markings or documentation designed to communicate the material’s hazards in the event of an accidental release. And experience demonstrates that undeclared hazardous materials are more likely to be packaged improperly and, consequently, more likely to be released in transportation. Moreover, it is likely that terrorists who seek to use hazardous materials to harm Americans will move those materials as hidden shipments. Accordingly, although the presence of undeclared hazardous materials by no means demonstrates wrongful intent, we cannot expect to target willful violations and security

threats by limiting inspections and enforcement to declared shipments. One way to address the problem of undeclared shipments is by expanding our inspection authority to permit an enforcement officer to open and examine packages suspected to contain hazardous materials. This expanded enforcement authority would also provide us with a tool to identify declared hazardous materials shipments that nonetheless may not have been prepared in accordance with the HMR requirements.

DOT’s experience enforcing Federal hazmat law and the HMR also suggests a need for expedited procedures to address imminent safety hazards. Imminent hazards, by definition, require immediate intervention to reduce the substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment. Under current statutory law, DOT may obtain relief against a hazmat safety violation posing an imminent hazard only by court order. Even with such a threat present, the DOT operating administration seeking such relief must coordinate with the Department of Justice (DOJ) to file a civil action against the offending party, and seek and obtain a restraining order or preliminary injunction. As a practical matter, judicial relief could rarely be obtained before the hazardous transportation movement is complete. The streamlined administrative remedies implemented in this rulemaking will materially enhance our ability to prevent unsafe movements of hazardous materials and reduce related risks.

#### *B. Statutory Amendments to Inspection, Investigation, and Enforcement Authority*

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which included the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA) as Title VII of the statute, 119 Stat. 1891. Section 7118 of HMTSSRA revised 49 U.S.C. 5121 to read:

—In paragraph (c)(1) that a designated officer, employee, or agent of the Secretary of Transportation:

(A) May inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

(B) Except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in,

transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) May remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) Such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard; and

(ii) Such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

(D) May gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

(E) As necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

(F) When safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

—In paragraph (c)(3) that, in instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) In the safe and prompt resumption of transportation of the package concerned; or

(B) In any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

—In subsection (d) that,

(1) In General.—If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders [as defined in paragraph (d)(5)], without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) Written Orders.—The action of the Secretary under paragraph (1) shall be in a written emergency order that—

(A) Describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) States the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

(C) Describes the standards and procedures for obtaining relief from the order.

(3) Opportunity for Review.—After taking action under paragraph (1), the Secretary shall provide for review of the action under

section 554 of title 5 if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

(4) Expiration of Effectiveness of Order.— If a petition for review of an action is filed under paragraph (3) and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

119 Stat. at 1902–1905.

Congress enacted HMTSSRA in part to combat the problem of undeclared hazardous materials shipments. While section 7118 of HMTSSRA (Section 7118), which amended 49 U.S.C. 5121, enhances DOT's authority to discover undeclared hazardous materials shipments, the application of this enforcement authority is not limited to undeclared shipments. On a broader scale, Section 7118 promotes the Department's inspection and enforcement authority "to more effectively identify hazardous materials shipments and to determine whether those shipments are made in accordance with the [H]azardous [M]aterials [R]egulations." H. Conf. Rep. No. 109–203, at 1079 (2005), *reprinted in* 2005 U.S.C.C.A.N. 452, 712. Congress reasoned that the Department needed enhanced inspection and enforcement authority to ensure that "DOT officials, law enforcement and inspection personnel \* \* \* have the tools necessary to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations." H. Conf. Rep. No. 109–203, at 1081, 2005 U.S.C.C.A.N. at 714. Section 7118 carries out this directive by authorizing DOT employees to access, open and examine a package (except for the packaging that is immediately adjacent to the suspected hazardous material's contents) that was offered for, or is in transportation in commerce, when those employees have an objectively reasonable and articulable belief that the shipment may contain a hazardous material, remove the package from transportation when the shipment may pose an imminent hazard, order the shipment to be transported, opened, and tested at an appropriate facility, as necessary, and permit the shipment to resume its transportation when an inspection does not identify an imminent hazard.

Following enactment of HMTSSRA, several interested parties recommended that PHMSA issue regulations that adopt the traditional notice and comment rulemaking procedure rather than the temporary regulations

prescribed by statute. PHMSA agrees that the traditional notice and comment rulemaking is necessary. As described further below, this rulemaking presents several critical factual and policy issues warranting public comment and development of an administrative record.

## II. Summary of Proposals in This NPRM

This NPRM proposes procedures to implement the expanded enforcement authority conferred in HMTSSRA. These procedures would apply to hazardous materials safety compliance and enforcement activities conducted by PHMSA, FAA, FRA, and FMCSA inspection personnel. Specifically, we are proposing procedures to enable DOT inspectors to open, detain, and remove a hazardous materials shipment from transportation in commerce, and order the package to be transported to a facility to analyze its contents. In addition, we are proposing procedures for issuing emergency orders to address imminent hazards. As proposed, these procedures will apply in a number of contexts and circumstances:

- We are proposing procedures under which an inspector may open a package to determine whether it contains an undeclared hazardous material or otherwise does not comply with applicable regulatory requirements. These procedures apply to the opening of an overpack, outer packaging, freight container, or other packaging component not immediately adjacent to the hazardous material. Inspectors will not open single packagings (such as cylinders, portable tanks, cargo tanks, or rail tank cars) nor will inspectors open the innermost receptacle of a combination packaging.

- We are proposing procedures under which an inspector may temporarily remove a package or shipment from transportation when the inspector believes that the package or shipment poses an imminent hazard. Such a belief may arise from a compliance problem identified as a result of opening the package or from conditions observed through an inspection that does not include opening the package. As proposed, the inspector may remove a package or shipment from transportation on his or her own authority provided he records his belief in writing. An inspector may temporarily remove any type of package or shipment from transportation if he or she has a "reasonable and articulable belief" that the package poses an imminent hazard.

- We are proposing procedures under which an inspector may order the

person in possession of or responsible for the package to transport the package and its contents to a facility that will examine and analyze its contents. An inspector may issue such an order for any type of package or shipment, not merely those packages for which package opening is authorized. As proposed, the inspector may issue this order on his own authority provided he documents his reasoning.

- We are proposing procedures under which an inspector will assist in preparing a package for safe and prompt transportation if, after a complete examination of a package initially thought to pose an imminent hazard, no imminent hazard is found. If the package has been opened, the inspector will assist in reclosing the package in accordance with the packaging manufacturer's closure instructions or an alternate closure method approved by PHMSA, marking the package to indicate that it was opened and reclosed in accordance with DOT procedures, and returning it to the person from whom it was obtained.

- We are proposing procedures for the issuance of an out-of-service (OOS) order if, after complete examination of a package initially thought to pose an imminent hazard, an imminent hazard is indeed found to exist. The OOS order effects the permanent removal of the package from transportation by prohibiting its movement until it has been brought into compliance with all applicable regulatory requirements. An OOS order may be issued for any type of packaging or shipment. For example, in the case of motor carriers, DOT will apply the Commercial Vehicle Safety Alliance (CVSA) OOS criteria for hazardous materials in identifying an imminent hazard for which an OOS order may be issued.

- We are proposing procedures for the issuance of an emergency order when PHMSA, FAA, FMCSA, or FRA determines that a non-compliant shipment or an unsafe condition or practice is causing an imminent hazard. As proposed, the PHMSA, FAA, FMCSA, or FRA Administrator may issue an emergency order without advance notice or opportunity for a hearing. The emergency order may be issued in conjunction with or in place of an OOS order. The emergency order may impose emergency restrictions, prohibitions, or recalls and may be issued for any type of shipment and for any unsafe condition posing an imminent hazard, not merely unsafe conditions related to packaging.

### III. Summary of Comments

PHMSA published a notice on January 25, 2006 (71 FR 4207), inviting interested persons to participate in a series of public meetings to comment on the agency's implementation of section 7118. The notice identified 11 possible topics on which PHMSA would begin a discussion at the public meetings. The topics were:

(1) The types of outer packagings that could be opened by an inspector, if the person in possession of the package does not agree to open the package himself.

(2) Whether the legal standard for opening an outer packaging—i.e., an objectively reasonable and articulable belief that the package may pose an imminent hazard—needs further explanation in the regulations.

(3) The locations at which a package would be observed and the relevance of this fact to the manner of opening the outer packaging and, if no imminent hazard is found, the manner of reclosing the package for further transportation in compliance with the HMR.

(4) The amount of time required to open an outer packaging, examine the inner container(s) or receptacle(s) and, if no imminent hazard is found, reclose the package for further transportation in compliance with the HMR.

(5) The circumstances under which a person would be required to have a package transported, opened, and the contents examined and analyzed, at an appropriate facility.

(6) The time and cost for the facility to examine and analyze the contents of a package which would be examined and analyzed at an appropriate facility.

(7) The value of the contents of a package which would be examined and analyzed at an appropriate facility.

(8) The effect upon offeror or transporter subject to an emergency action or order, including removing a package from transportation or ordering a restriction, prohibition, recall, or OOS order to abate an imminent hazard.

(9) Conditions that would be appropriate for including in an emergency restriction, prohibition, recall, or OOS order, such as allowing a vehicle to be moved to a safe location for inspection or vehicle repairs.

(10) The time and cost of preparing a petition for review of an emergency action or order.

(11) The criteria necessary to seek relief from the issuance of an emergency action or order.

71 FR at 4208 (Jan. 25, 2006).

PHMSA convened public meetings on February 21, 2006, in Dallas, Texas; March 8, 2006, in Washington, DC; and March 15, 2006, in Seattle, Washington; in which the agency invited interested persons to comment on the agency's implementation of section 7118 within the context of the above 11 topics and any other issues of interest. The material comments both oral and written elicited from these meetings are summarized

below. (Transcripts of these meetings are available on the U.S. Government Regulations.gov Web site at <http://www.regulations.gov>.)

#### *(1) Types of Outer Packagings That Could Be Opened By an Inspector*

Several participants (Brumbaugh, Jackson, McElhoe, Rinehart, Roberts, Surovi, Tobin, Association of Hazmat Shippers (AHS), Alaska Airlines, Boeing Company, Dangerous Goods Advisory Council (DGAC) and Tyco Healthcare (Tyco)) expressed concern about how DOT intends to exercise its new enforcement authority, i.e., identifying undeclared shipments or non-compliant shipments and the procedures DOT would follow when opening such packages during an inspection. Additionally, the International Vessel Operators Hazardous Materials Association (VOHMA) and Council on Safe Transportation of Hazardous Articles (COSTHA) questioned the manner in which section 7118 would apply to carriers given that carriers may not open packages that they do not own. Others suggested that DOT should limit the exercise of its enhanced inspection and enforcement authority to an offeror's facility to minimize the risk of a hazardous material release during transportation and to direct enforcement effort toward the parties most responsible for ensuring proper packaging and certification.

*PHMSA Response:* As discussed above, the primary objectives of DOT's enhanced inspection and enforcement authority are to discover and prevent undeclared shipments of hazardous materials that would otherwise pose imminent hazards in transportation. This authority, however, is not limited to undeclared hazardous material shipments. If a shipment, whether or not it is a declared hazardous material, is found to be leaking; is improperly marked, labeled or packaged; or the shipping paper indicates a potential problem, a DOT inspector may invoke this authority to open and examine the shipment to determine the scope of the problem and potential hazard. In addition, if the shipment poses an imminent hazard, the inspector may remove it from transportation. The procedures governing such inspections are enumerated under proposed section 109.3(b) and discussed in the section-by-section analysis below. In other words, PHMSA intends for DOT inspectors to use their enhanced inspection authority to verify that hazardous materials shipments are packaged, marked, and labeled in compliance with DOT requirements.

The package opening authority, however, applies only to an overpack, outer packaging, freight container, or other packaging component that is not immediately adjacent to the hazardous material it contains. Thus, as proposed, DOT inspectors will not open packagings that serve as the primary means of containment (such as cargo tanks, portable tanks, railroad tank cars, or cylinders) and will not open inner packagings of combination packages (such as the bottles inside a fiberboard box or test tubes inside an infectious substances triple packaging). In any case, this proposed rule in no way limits the Department's general inspection and investigation authority under 49 U.S.C. 5103(b)(1). The final rule will authorize certain additional investigatory techniques and remedies, without limiting DOT's existing authority with respect to the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5103(b) also grants the Secretary regulatory authority with respect to security in the transportation of hazardous materials. Therefore, the authority to issue emergency orders is not limited to safety; rather, it is foreseeable that this authority may be invoked in a case of national emergency to address potential security violations involving the transportation of hazardous materials.

PHMSA foresees that DOT hazardous materials inspections will continue at offeror or carrier fixed facilities or terminals. But we note that inspections may be conducted at other locations within the Department's jurisdiction, consistent with the authority conveyed by section 7118, depending upon the relevant circumstances and as necessary to promote the interest of public safety. PHMSA recognizes that detaining a shipment may impact a commercial transaction involving the package in transit and will make every effort to avoid unnecessary delays and interruptions.

The instances in which this authority may be invoked are heavily fact-specific and situation-dependent. Thus, it would not serve the interest of public safety to limit the context in which this authority may be exercised. Though we will make every effort to avoid unnecessary delays and shipment interruptions, the authority granted in SAFETEA-LU is sufficiently specific and particularized, authorizing designated DOT agents to open a package in transportation if that agent has an objectively reasonable and articulable belief that the package may contain a hazardous material, irrespective of the location at which the package is identified.

With respect to comments regarding carriers' ability to open packages, we do not intend this rulemaking to affect contractual or other legal rights or obligations surrounding the carrier-shipper relationship. Although carriers and shippers may wish to clarify or address their contractual arrangements, the regulatory procedures we are proposing do not depend on carriers' consent or assistance in opening packages. Should a carrier refuse consent, section 7118 authorizes an agent of the Secretary to open the package himself or herself or to order the package to be transported to an appropriate facility at which it may be opened and examined. In any case, we consider contract negotiations among private entities beyond the scope of this rulemaking.

The operating administrations responsible for enforcement of the HMR—PHMSA, FMCSA, FAA, and FRA—all worked together under PHMSA's leadership to develop this proposed rule. This NPRM proposes regulations that establish a clear, basic outline of the procedures all four operating administrations will use to implement DOT's new enforcement authority. To provide for uniformity across modes of transportation and separate enforcement staffs, the regulations proposed in this NPRM must be broad and provide a common framework. The operating administrations are also developing a joint operations manual to address issues particular to a specific mode of transportation or regulated industry. It is our intent that the joint operations manual will be publically available on PHMSA's Web site at the time of issuance of the Final Rule. The proposed regulations set out a framework for the procedures PHMSA, FMCSA, FAA, and FRA will employ when conducting inspections or investigations, thus ensuring consistency in approaches and enforcement measures among modes of transportation. A Final Rule, implemented with the guidance of an operational manual, will ensure that this authority, especially a finding of an imminent hazard, is used effectively yet judiciously. It will focus and direct an informed enforcement effort to address problems with undeclared shipments of hazardous material and other packaging communication requirements while preventing the additional authority from being misused as an exploratory tool or without reasoned deliberation.

*(2) The Meaning and Application of Objectively Reasonable and Articulable Belief That a Package May Pose an Imminent Hazard*

Commenters raised two critical questions regarding the legal standards that determine whether DOT may open a shipment and detain and remove it from transportation. The American Trucking Association (ATA), COSTHA, DaRuBa Enterprises (DaRuBa), Arrowhead Industrial Services, DGAC, VOHMA, and Tyco contend that the operative term "objectively reasonable and articulable belief" requires further explanation. AHS, COSTHA, and VOHMA also requested clarification on what the term "imminent hazard" means. Finally, several interested persons, including DGAC, ATA, and the Institute of Makers of Explosives (IME) questioned how PHMSA would define these terms in the regulatory text.

*PHMSA Response:* The proposed rule defines "objectively reasonable and articulable belief" as "a belief based on particularized and identifiable facts that provide an objective basis to believe or suspect." See proposed § 109.1. The proposed rule defines "imminent hazard" as "the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment." See proposed § 109.1. This proposed definition of "imminent hazard" is consistent with the statutory definition of the term found in 49 U.S.C. 5102(5). Both of these terms determine whether the Department may detain, open, and examine a suspect shipment for the presence of hazardous material in its contents and/or remove the package from transportation in commerce.

PHMSA starts with the premise that an offeror that places articles in a closed and opaque container has a legitimate expectation of privacy and retains a possessory interest in those items when they are being transported in commerce. *Jacobsen*, 466 U.S. at 113, 114; *U.S. v. Villarreal*, 963 F.2d at 773. The hazardous materials transportation industry, however, is closely regulated, meaning that a person engaging in this industry has a reduced expectation of privacy. *U.S. v. V-1 Oil Company*, 63 F.3d 909, 911 (9th Cir. 1995), *cert. denied*, 517 U.S. 1208 (1996). DOT therefore is authorized to conduct warrantless and unannounced

inspections of an entity that offers or transports hazardous material in commerce to determine its level of compliance with the Hazmat Law and HMR under the "administrative search" doctrine. *Id.* at 913.

When the government asserts control of the shipment and its contents, e.g., by detaining the package from further transportation, it has conducted a seizure subject to the Fourth Amendment. *Jacobsen*, 466 U.S. at 120. Nevertheless, brief investigative detentions are authorized, provided there is a reasonable articulable suspicion that the shipment does not comply with regulatory requirements. *V-1 Oil Company v. Means*, 94 F.3d 1420, 1424 (10th Cir. 1996). Known as a "Terry" stop after the landmark decision, *Terry v. Ohio*, 392 U.S. 1 (1968), such an investigative stop is permitted when an inspector can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the detention. *Terry*, 392 U.S. at 21. The inspector must have particularized and identifiable facts, i.e., some articulable basis, to believe that a Federal statute or regulation has been violated. See *Brierley v. Schoenfeld*, 781 F.2d 838, 841 (10th Cir. 1986). *Terry* employs a "less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). (In contrast, probable cause means "a fair probability that contraband or evidence of a crime will be found." *Alabama v. White*, 496 U.S. 325, 330 (1990)). In short, DOT need only establish a "minimal level of objective justification" to detain, open, and inspect a shipment that may have hidden or undeclared hazardous materials. See *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989).

Accordingly, an inspector would need to produce facts establishing that the official reasonably believed that a noncomplying condition existed. *U.S. v. Delfin-Colina*, 464 F.3d 392, 398 (3d Cir. 2006). An inchoate hunch or guess would be insufficient: an inspector is required to set out evidence supporting the detention. *Alabama*, 496 U.S. at 329-30; see also 59 FR 7448, 7454 (Feb. 15, 1994) (FRA "reasonable cause" testing standard requires reasonable suspicion). The information relied upon may come from a variety of sources, including but not limited to the following: package appearance, identity of offeror or carrier, an odor emanating from a container, and anonymous tips. *U.S. v. Wheat*, 278 F.3d 722, 726 (8th Cir. 2001), *cert. denied*, 537 U.S. 850 (2002). The basis for reasonable

suspicion would center on the totality of circumstances experienced by the inspector and the official's skill and experience in determining whether an investigative stop would be justified. *Brierley*, 781 F.2d at 841. The Department therefore would afford its inspectors reasonable discretion in making reasonable suspicion findings in light of the flexible nature of *Terry* and its progeny.

While this proposed regulation implements the Department of Transportation's enforcement authority, it does not in any way affect Department of Homeland Security (DHS) agents exercising their statutory authority at points of entry. Therefore, DOT's standards for the inspection and detention of packagings, vehicles or persons, including a requirement of an objectively reasonable and articulable belief that a package may contain a hazardous material, do not apply to DHS, which operates under separate statutory and regulatory authorities.

Finally, Department officials would exercise reasonable, intrusive means when stopping a shipment from continuing in transportation in commerce. An inspector would be authorized to hold a package at a terminal or depot until qualified personnel or shipping papers arrived to ascertain its contents. The inspector also would be permitted to order the shipment to be moved to an appropriate facility when necessary to safely conduct an inspection. *See Means*, 94 F.3d at 1427. The inspector would release the shipment for transportation when the underlying objectives of the detention had been met.

The term imminent hazard has been defined in the hazmat law for many years (49 U.S.C. 5102(5)) and PHMSA proposes to retain that definition without change. An imminent hazard exists when an unsafe condition or practice, or a combination thereof, causes, or is causing, a situation that is likely to result in serious injury or death, or significant property or environmental damage if not discontinued immediately. The proposed rule would authorize a designated DOT inspector to remove a package from transportation if the inspector has an objectively reasonable and articulable belief that the package may pose an imminent hazard, provided that he contemporaneously documents such belief in accordance with the regulations issued under section 7118(e).

In summary, this proposed rule would provide three new enhanced enforcement tools. First, a Department inspector would be permitted to stop,

open, and examine a shipment when he or she has a reasonable suspicion that the package contains a hazardous material. Depending on the circumstances, a package may be suspicious even if it bears no mark, label, or shipping paper indicating the presence of a hazardous material. In other cases, a package could be marked or labeled incorrectly, thus causing the inspector to believe that the package contains hazardous material. Misidentification of the package contents can have serious safety implications, well justifying use of the package opening authority to inspect HMR compliance. Listing of an incorrect UN identification number, for example, could result in improper segregation, handling, and/or response measures. Likewise, the inspector could elect to open a package that is properly marked and labeled but that appears not to comply with other regulatory requirements or otherwise presents an imminent hazard.

Second, the Department inspector or delegated official would be authorized to remove the package and related packages in the shipment from transportation in commerce and order their delivery to an appropriate facility for testing and analysis when he or she has determined that an imminent hazard may exist. A finding of imminent hazard is not a prerequisite to the detention, opening and examination of a package suspected of containing a hazardous material. Third, upon further investigation, PHMSA on its own initiative, or after advice and recommendation from the other modal officials, may issue a recall of an entire packaging design if it presents an imminent hazard.

### (3) Reclosing Packages

Several commenters expressed concern about the reclosing of packages after they have been opened. Allergan, COSTHA, Delta Airlines, and Rykos expressed concern about preserving the integrity of a package after it has been opened and found not to contain an undeclared hazardous material. The regulated community also was interested in learning about the manner in which DOT intends to reclose certain packagings that have been opened in transit, including specification packaging; refrigeration packaging; specific-mode packaging; pharmaceutical manufacturing and healthcare products packaging; overnight or express delivery packaging; and packages containing expensive, valuable, or perishable products. American President Lines (APL), the Association of American Railroads,

Nuclear Energy Institute, and Rykos inquired about reclosing packagings that require specialized seals, and the ATA suggested that DOT develop a seal or tape to identify that a package has been opened to ensure against rejection upon delivery. Finally, American Eagle Airlines, Brookwarehousing Corporation, COSTHA, DGAC, International Warehouse Logistics Association (IWLA), United Parcel Service, and VOHMA advised that PHMSA should consider whether small businesses or carrier terminals are properly equipped to reclose a package that is already in transit at the time DOT conducts an inspection.

*PHMSA Response:* The Department is developing internal operational procedures to address the proper closure of packaging in accordance with the HMR. As part of these procedures, we are considering affixing a DOT-specific tape over the packaging that identifies the agency and the inspector who opened the package in question. These procedures will be covered within the joint operations manual discussed above in the section entitled "Types of Outer Packages that could be Opened by Inspectors."

We are sensitive to concerns about reclosing shipments that are opened during a hazardous materials inspection. The availability of qualified personnel, equipment, accessibility, and other capabilities are factors we are considering for the guidelines on reclosing shipments after conducting inspections. PHMSA thus solicits further comments from the public on these and other factors in reclosing packages and the manner and materials available to prevent release of hazardous materials.

### (4) Amount of Time Required To Open and Examine an Outer Packaging

The ATA and VOHMA expressed concern that enhanced inspections may delay their business operations and questioned whether exercising this authority may impact carriers' other existing regulatory requirements. For example, ATA expressed concern that the amount of time required to open and examine a package may potentially affect a carrier's obligation to comply with hours of service requirements under the Federal Motor Carrier Safety Regulations. Moreover, VOHMA stated that if a package is opened in accordance with this enhanced authority, inspectors may not be able to restore every package in accordance with the manufacturer's instructions, and thus the package could become noncompliant with other regulatory

requirements or be refused by the consignee.

*PHMSA Response:* We believe that the package opening authority can be exercised without undue interference with business operations. DOT will take reasonable measures to narrow the scope of an enhanced inspection to determine compliance with the HMR and will remove a shipment from transportation only when there is a reasonable basis for suspecting that the package may pose an imminent hazard. Correspondingly, the Department will limit the time of such inspections to minimize transportation delays when we can do so without compromising transportation safety. We request comments relating to any time-sensitive standards or consignment contracts mandated by law that may be affected by a final rule.

The implementation of this enhanced authority will not waive or supersede any other regulatory requirements. The packages must be reclosed and shipped in accordance with the HMR. An inspector who exercises this enhanced authority will take action to facilitate the resumption of transportation in commerce if the package is found to be in compliance with the HMR. If the package is not in compliance, the package will not be returned to the stream of commerce until the package is brought into conformance with the HMR.

*(5) When a Package Must Be Transported and Analyzed at an Appropriate Facility*

The ATA and DGAC inquired about which entity would transport a hazardous material package to an offsite facility, pay to transport, and test the material subject to this authority.

*PHMSA Response:* The operating administration requiring the testing will pay for the transportation and analysis of the material if the package is found to be in compliance with the HMR. If the material is found to be packaged in violation of the HMR, the costs for the transportation and analysis of the material would be taken into consideration at the time any civil penalty is assessed against the party responsible for the violation (usually the offeror). Furthermore, nothing herein is intended to relieve any entity or person of hazmat clean-up costs under Federal, State, or local laws as enforced by other Federal government agencies (e.g., Environmental Protection Agency, Bureau of Alcohol Tobacco, Firearms, and Explosives, and Occupational Safety and Health Administration).

*(6) Effect on Offeror or Transporter Subject to an Emergency Action or Order*

Commenters addressed the issue of the impact that an emergency order may have on an offeror or transporter that is subject to its requirements. Their primary concern was the effect that an emergency order may have on commercial operations relating to pre-transportation and transportation functions that are regulated by the HMR.

*PHMSA Response:* PHMSA understands that an emergency order may affect commercial operations of offerors or transporters that perform regulated activities. Indeed, because issuance of an emergency order does not require a finding of noncompliance, it is possible that such an order could require a regulated entity to alter or amend otherwise lawful practices or transactions. The circumstances warranting such extraordinary action are necessarily fact-specific and, in all likelihood, rarely encountered. In any case, DOT intends to tailor the remedy to the imminent hazard present, issuing only the appropriate restriction, prohibition, recall, or out-of-service order necessary to abate the condition. We will use this enforcement tool judiciously, as a means of addressing imminent hazards and not as a substitute for rulemaking or other measures for addressing emergent risks.

*(7) Liability*

Commenters also raised the issue of whether DOT or its operating administrations would be liable for any damages to business operations when an inspector conducts an enhanced inspection or when a modal administration issues an emergency order. In particular, the interested persons asked whether the Federal government would be responsible for compensatory, consequential, or incidental damages incurred by any regulated entity that had its shipments contaminated, damaged, delayed, destroyed, or removed from service as a result of an enhanced inspection or emergency order.

*PHMSA Response:* PHMSA acknowledges that the exercise of enhanced inspection and enforcement authority occasionally may result in the breach of packages and/or delay of shipments that have been offered and transported in full compliance with regulatory requirements. Although we will strive to minimize such effects, we believe the public benefits to be gained through enhanced inspection and enforcement measures justify the increased burdens. The exercise of

enhanced inspection and enforcement authority in accordance with the proposed rule will protect life, property, and the environment, and improve the performance of the transportation system by reducing risks posed by undeclared and other noncompliant hazardous materials shipments.

To minimize burdens on the transportation system, the Department will take measures to target and manage its exercise of enhanced inspection and enforcement remedies. Such measures include training its inspectors to exercise appropriate discretion while carrying out their inspection tasks consistently with HMTSSRA and a final rule. In any case, we do not expect DOT to bear financial responsibility for private costs related to our exercise of enhanced inspection and enforcement authority. Under the discretionary function exception, the Federal Tort Claims Act (FTCA) would bar any common law tort action against the Department or operating administration based on such activities. *See* 28 U.S.C. 2680(a); *United States v. S.A. Empresa de Viacao Aerea Rio Grandense*, 467 U.S. 797, 809–10 (1984) (“*Varig Airlines*”) (discretionary function exemption was intended to exempt claims stemming from Federal agencies’ regulatory activities); *Hyllin v. U.S.*, 755 F.2d 551, 553 (7th Cir. 1985) (discretionary function exception prohibits tort claims against government for inspection and enforcement activities requiring exercise of discretion); *Mid-South Holding Co. v. United States*, 225 F.3d 1201, 1206 (11th Cir. 2000) (discretionary function exception applies to any discretionary act irrespective of “administrative level at which it is authorized or taken”); *Wells v. United States*, 655 F. Supp. 715, 720 (D.D.C. 1987) (government’s discretionary acts in regulating private conduct “are presumptively exempt from liability”); *aff’d*, 851 F.2d 1471 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989); *cf.*, *Roundtree v. United States*, 40 F.3d 1036 (9th Cir. 1994) (FAA not liable in suspending operating certificate under FTCA’s discretionary function exception).

*(8) Training of Inspectors*

APL and DGAC recommended that DOT properly train the inspectors who will exercise the enhanced inspection and enforcement authority in the field. They contend training is essential to ensure that well-defined inspections are conducted, enforcement actions are measured, and the public (and the inspectors themselves) are protected.

*PHMSA Response:* PHMSA agrees that the DOT inspectors conducting

enhanced inspections will need to be trained on carrying out such inspections. Inspectors will also be trained on utilizing an enforcement remedy commensurate with the non-complying condition or imminent hazard identified and having the requisite knowledge in repackaging shipments that have been opened. The inspectors also will need to be trained on various scenarios in which they will need to order a shipment to be transferred to an appropriate facility for testing and analysis. Because all Department inspectors will have the same general training and modal specific instruction (as discussed above in the section on "Types of Outer Packages that could be Opened by Inspectors"), PHMSA is confident that inspectors will be proficient in applying the enhanced inspection and enforcement regulations to inspections conducted at offeror or carrier facilities.

#### (9) State Participation in the Federal Hazardous Materials Inspection Program

APL, ATA, IME, and Prezant Consulting cautioned that DOT and State inspectors conducting hazardous materials inspections need to be consistent in carrying out the regulations implementing the enhanced inspection and enforcement authority.

*PHMSA Response:* The proposed rule is limited in scope to authorized Federal enforcement employees of PHMSA, FRA, FAA, and FMCSA. The proposed regulations and underlying statutory authority are Federal; they would not empower State officials to exercise the enhanced inspection and enforcement authority. All emergency orders under this enhanced enforcement authority will be issued solely by the Federal government, not State participants. These proposed regulations are not intended to be part of the Motor Carrier Safety Assistance Program (MCSAP) or the Rail Safety State participation program. However, the proposed regulations would not limit the States from passing similar statutes or from promulgating similar regulations for their hazardous materials transportation enforcement officials.

#### (10) Communications/Notification to Parties

APL, IWLA, DaRuBa, and Tyco expressed concern about notifying offerors and consignees about a possible delay in arrival because DOT intended to open a package for inspection.

*PHMSA Response:* PHMSA believes that all parties responsible for a shipment that is opened or removed from transportation need to be notified

of the action taken. DOT inspectors will be required to communicate the findings made and enforcement measures taken to the appropriate offeror, recipient, and carrier of the package, and the expected delay or detention based on the condition of the shipment, location of the inspection, and need and availability of personnel, equipment, and other resources to reclose the package to safely resume its transportation.

#### (11) Assumption of Control of Detained Shipment

Commenters questioned who would assume control of a package when an inspection found undeclared hazardous material or determined that the shipment may pose an imminent hazard, and when such control would commence.

*PHMSA Response:* The offeror tendering the package or the carrier transporting the shipment retains custody of the shipment until the government asserts or exercises dominion or control over the package and its contents. *Jacobsen*, 466 U.S. at 120. Once an inspector opens the package to continue the inspection or detain or remove the shipment from transportation, the Department will become the responsible custodian for the package. If a package is opened but does not pose an imminent hazard, and is otherwise in compliance with the HMR, the inspector will assist in reclosing the package, at which point custody will revert to the offeror or carrier, and reenter the transportation stream. If a package is non-compliant before it is opened, and it is later found not to pose an imminent hazard, the offeror or carrier will resume custody of the package at the conclusion of the investigation. It is the ultimate responsibility of the offeror to bring any such package into compliance.

This proposed rule contemplates DOT informing the private party of the government's intent to assert and relinquish control of the shipment and the measures it will take to safeguard and reclose the package until it is safe to resume its movement in transportation. PHMSA welcomes comments on the parties' expectations when the government exercises control of a package and whether further clarification of possessory interest is necessary.

#### Section-by-Section Analysis

PHMSA proposes to add part 109 to Title 49, Code of Federal Regulations, prescribing standards and procedures governing exercise of enhanced inspection and enforcement authority

by DOT operating administrations. Below is an analysis of the proposed regulatory provisions.

#### Section 109.1 Definitions

This section contains a comprehensive set of definitions. PHMSA proposes to promulgate these definitions in order to clarify the meaning of important terms as they are used in the text of this proposed rule. Several terms introduce concepts new to the HMR. These definitions require further discussion as set forth below. Other terms defined in this rule are borrowed from the Hazmat Law at 49 U.S.C. 5102 and are used in their statutory meaning.

*Administrator and Agent of the Secretary or agent* are proposed to identify the parties authorized by delegation from the Secretary to carry out the functions of the proposed rule. *Administrator* is defined as the head official of each operating administration within DOT to whom the Secretary has delegated authority under 49 CFR part 1 and any person employed by an operating administration to whom the Administrator has delegated authority to carry out this rule. Likewise, *Agent of the Secretary or agent* means a Federal officer or employee, including an inspector, investigator, or specialist authorized by the Secretary or Administrator to conduct inspections or investigations under the Hazmat Law and HMR.

*Chief Safety Officer or CSO* refers to the Assistant Administrator for PHMSA who is appointed in competitive service by the agency's Administrator. See 49 U.S.C. 108(e).

*Emergency order* is defined as an emergency restriction, prohibition, recall, or out-of-service (OOS) order. (The term "out-of-service order" is defined below.) As proposed, an Administrator, and in the case of an OOS order, an agent of the Secretary would be authorized to impose an equitable remedy restricting, prohibiting, recalling, or removing from service a package that contains a hazardous material. An emergency order is the type of extraordinary relief available to address imminent hazard circumstances.

*Freight container* is defined as it is defined in 49 CFR 171.8 and has been included in this section for clarity and ease of referral.

*Immediately adjacent* to the hazardous material contained in the package means a packaging that is in direct contact with the hazardous material, or otherwise serves as the primary means of containment of the hazardous material.

As defined by statute, *imminent hazard* means “the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.” 49 U.S.C. 5102(5). Restated, an imminent hazard exists when any condition is likely to result in serious injury or death, or significant property or environmental damage if not discontinued immediately. *Cf.* Sen. Rep. No. 98–424, at 12 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4785, 4796 (definition of “imminent hazard” under the Motor Carrier Safety Act).

*Objectively reasonable and articulable belief* is defined in this proposed rule as a belief based on discrete facts or indicia that provide a reasonable basis to believe or suspect that a shipment may contain a hazardous material. The term, which is discussed above in the context of DOT inspections of hazardous materials shipments, codifies the temporary stop and detention principle often referred to as a “*Terry*” stop, referring to *Terry v. Ohio*, 392 U.S. 1 (1968). The reasonable suspicion standard must be more than an “inchoate and unparticularized suspicion or ‘hunch[.]’” *id.* at 27, meaning that a reasonable person possessing the same information as the inspector had must have believed that the action taken was appropriate. *Id.* at 21–22. In determining whether an officer or agent had such a reasonable suspicion, courts consider the “totality of the circumstances.” *See Schneekloth v. Bustamonte*, 412 U.S. 218 (1973). At its core, the term refers to an investigatory stop in which there is particularized suspicion based on observations made, inferences drawn, and deductions made that the shipment does not comply with the Hazmat Law or HMR. *See generally, U.S. v. Cortez*, 449 U.S. 411, 417–18 (1981).

The brief investigative detention enables the inspectors to conduct a more thorough inspection to determine the level of compliance with the Hazmat Law or HMR and is reasonably related in scope to the circumstances justifying the detention. *See Means*, 94 F.3d at 1424; *U.S. v. McSwain*, 29 F.3d 558, 561 (10th Cir. 1994). This legal standard authorizes minimally intrusive conduct to detain a shipment for a short duration when articulable facts and circumstances suggest that a package contains undeclared hazardous materials. *See McSwain*, 29 F.3d at 561. The agency notes that the standard

authorizes inspectors to employ reasonable intrusive means, but not the least intrusive means, to conduct an inspection, meaning that safety and security measures may justify moving a package to another site when necessary to carry out an inspection. *See Means*, 94 F.3d at 1427.

*Out-of-service (OOS) order* is defined as a written requirement issued by an agent of the Secretary prohibiting further movement or operation of an aircraft, vessel, motor vehicle, train, railcar, locomotive, transport vehicle, or freight container, portable tank, or other package until certain conditions have been satisfied. An order is similar in concept and application to a special notice for repairs that FRA issues for freight cars, locomotives, passenger equipment, and track segments. *See* 49 CFR part 216. The definition covers transport vehicles and packages that are unsafe for further movement, requiring that the equipment be removed from transportation until repairs are made or safety conditions are met. PHMSA believes that an OOS order is appropriate when equipment or a shipment is unsafe for further service or presents an unreasonable or unacceptable risk to safety, creating an imminent hazard at a given instant.

*Packaging* as defined in this part is more expansive than the definition provided at 49 CFR 171.8. In this part, proposed § 109, the term includes a freight container, intermediate bulk container, overpack, or trailer as a receptacle to contain a hazardous material. As proposed, the regulatory text would authorize DOT inspectors to open, detain, and remove from transportation such container or enclosure units when circumstances warrant.

*Perishable* refers to a hazardous material that may experience accelerated decay, deterioration, or spoilage. PHMSA envisions etiologic agents, such as biological products, infectious substances, medical waste, and toxins as perishable commodities that will require special handling.

*Properly qualified personnel* means a company, partnership, proprietorship, or individual who is qualified to inspect, examine, open, remove, test, or transport hazmat shipments.

*Remove* means to keep a package from entering into the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce. The term is defined to make clear that if a DOT

inspector has an objectively reasonable and articulable belief that a package may pose an imminent hazard, that inspector is authorized to stop, detain, and prevent the further transportation in commerce of that package until the imminent hazard is abated.

*Safe and expeditious* refers to appropriate measures or procedures available to minimize any delays in resuming the movement of a perishable hazardous material.

*Trailer* is added to set out the contours of another type of package that is subject to this rule. Although a trailer and freight container perform the same function, a trailer has a chassis, hitch, and tires attached to the unit, enabling it to travel as a cargo unit attached to a tractor.

### Section 109.3 Inspections and Investigations

Proposed § 109.3 sets out the inspections and investigations that agents of the Secretary (e.g., DOT inspectors) would be authorized to conduct in implementing the HMTSSRA. Of significance, this section would implement section 7118 by enabling inspectors to open, detain, and remove a hazardous material shipment from transportation in commerce, and order the package to be transported to a facility that can analyze its contents.

Paragraph (a) of § 109.3 reiterates the authority to initiate inspections and investigations as provided by 49 U.S.C. 5121(a), which has been delegated to the operating administrations and redelegated to the inspectors by internal delegation. The operating administrations focus their inspection resources on the mode of transportation that they oversee. *See* 49 CFR 1.47(j)(1) (FAA), 1.49(s)(1) (FRA), 1.53(b)(1) (PHMSA), and 1.73(d)(1) (FMCSA). Nevertheless, operating administrations may “use their resources for DOT-wide purposes, such as inspections of shippers by all modes of transportation.” 65 FR 49763, 49764 (Aug. 15, 2000). DOT believes that broad delegation authority is necessary to address cross-modal and intermodal issues to combat undeclared hazardous materials shipments. *Id.* at 49763. Accordingly, DOT inspectors would be authorized to carry out the enhanced inspection and enforcement authority rule across different modes of transportation.

Proposed § 109.3(b) sets out the enhanced inspection process when conducting hazardous materials inspections. Inspectors must present their credentials for examination upon request under 49 U.S.C. 5121(c)(2) and may gather information by interviewing,

photocopying, photographing, and audio and video recording during inspections or investigations. The inspections or investigations may be conducted at any pre-transportation or transportation facility wherever a hazardous material is offered, transported, loaded, or unloaded or stored incidental to the hazardous material movement, provided they are performed "at a reasonable time and in a reasonable manner." See 49 U.S.C. 5121(c)(1)(A); 49 CFR 171.1. PHMSA interprets "reasonable time" to mean an entity's regular business hours. PHMSA believes "reasonable manner" means that DOT inspectors may gather information from any entity or source that is related to the transportation of hazardous materials in commerce whenever hazardous material operations or work connected to such operations are being performed. See generally H.R. Rep. No. 96-1025, at 14 (1980), reprinted in 1980 U.S.C.C.A.N. 3830, 3839. DOT also may issue and serve administrative subpoenas for documents or other tangible things when such evidence is necessary to assist an inspection or investigation. Each operating administration would serve the subpoena in accordance with its own regulations. See 14 CFR 13.3 (FAA), 49 CFR 105.45-.55 (PHMSA), 49 CFR 209.7 (FRA), and 49 CFR 386.53 (FMCSA). PHMSA believes that this provision would enable DOT to gather information from any source, including the offeror, carrier, packaging manufacturer or tester responsible for the shipment, to learn about the nature of the contents of the package. This process would promote communication and cooperation by all concerned parties and enable the Department to detect and deter undeclared hazardous material shipments.

Proposed § 109.3(b)(4) implements the authority conferred by 49 U.S.C. 5121(c)(1) to enable DOT inspectors to take enhanced inspection and enforcement action. Under § 109.3(b)(4)(i), inspectors may open an overpack, outer packaging, freight container, or other package component that is not immediately adjacent to the hazardous material contents and inspect the inside of the receptacle or container for undeclared hazardous material, provided that the officials have an objectively reasonable and articulable belief that the shipment contains hazardous material. (Please see above for PHMSA's discussion of the meaning and application of "objectively reasonable and articulable belief.") Therefore, shipments such as plastic bottles or drums, which are in direct

contact with a hazardous material, will not be opened pursuant to this authority. PHMSA expects DOT inspectors to exercise this enhanced authority at locations through which hazardous materials are shipped and transported, including port facilities, weigh stations, international border crossings, interchange points, intermodal facilities, and terminals to identify undeclared hazardous material shipments or other noncompliant shipments that are offered for transportation, or being transported, in commerce.

The enhanced inspection authority builds on the existing authority to conduct warrantless inspections. Under the administrative search doctrine, a company engaged in a closely regulated activity, such as hazardous materials transportation, has no Fourth Amendment protection against unannounced compliance inspections. See *V-1 Oil*, 63 F.3d at 913 (FRA's warrantless and unannounced inspection of a hazardous materials transportation facility is constitutional); see also *U.S. v. Burger*, 482 U.S. 691 (1987); *Skinner*, 489 U.S. at 625 (railroad industry is pervasively regulated to ensure safety); *U.S. v. Mendoza-Gonzalez*, 363 F.3d 788, 794 (8th Cir. 2004) (commercial trucking is a closely regulated industry); *Means*, 94 F.3d at 1426 (motor carrier industry is closely regulated); *Suburban O'Hare Com'n v. Dole*, 787 F.2d 186, 188 (7th Cir.) (aviation industry is closely regulated), cert. denied, 479 U.S. 847 (1986). The proposed rule would enable inspectors who already have unconditional access to property relating to hazardous material transportation to more closely examine certain shipments. In all cases, DOT inspections are limited by time, place, and manner in which a package may be opened. The statute (49 U.S.C. 5121) limits the discretion of the inspectors, delineating the scope of inspections and defining the objective circumstances in which the package opening authority may be exercised. These limitations promote uniform application of the enhanced inspection authority, while leaving inspectors sufficient discretion to respond effectively to circumstances encountered in the field. We note that DOT's use of unannounced, warrantless inspections has survived legal and constitutional challenge, as reflected in the cases cited above. Although evidence gathered in hazmat inspections or investigations could later serve as the basis for criminal prosecution, our use of warrantless inspections serves a legitimate and

lawful purpose: detecting and deterring undeclared hazardous material shipments. See *Skinner*, 489 U.S. at 620-21 n.5 (1989) (FRA inspection program served lawful purpose and was not a pretext to collect evidence for criminal law enforcement purposes).

Proposed § 109.3(b)(4)(ii) implements 49 U.S.C. 5121(c)(1)(C) by permitting a DOT inspector to remove from transportation in commerce a package (including a freight container) when the inspector has an objectively reasonable and articulable belief that the package contains a hazardous material and may pose an imminent hazard. PHMSA intends to employ this remedy when necessary to suspend or restrict the transportation of a shipment that is deemed unsafe. See *S. Rep. No. 101-444*, at 10 (1990), reprinted in 1990 U.S.C.C.A.N. 4595, 4604. Should this condition exist, the inspector must document the basis for removing the package from transportation as soon as practicable, including the findings that the shipment contained a hazardous material and the imminent hazard identified. The documentation requirement safeguards the inspection and enforcement process by requiring DOT to specifically describe the hazard present and substantiate the need to remove the shipment from the stream of commerce. The documentation will chronicle the activities and events culminating in removing the package from transportation. The documentation must provide sufficient justification to pursue further investigation into the contents of a package. This section further provides that an inspector must limit this removal to a reasonable duration of time in order to determine whether the package may pose an imminent hazard.

Section 109.3(b)(4)(iii), which implements 49 U.S.C. 5121(c)(1)(E), proposes that an agent of the Secretary may order the party in possession of the package, or otherwise responsible for the shipment, to have it transported to, opened, and examined at an appropriate facility if it is not practicable to examine the contents of a package at the time of the stop. This provision would enable DOT to facilitate learning about the nature of the product inside the shipment by permitting delivery of the shipment to a facility that is capable of identifying the contents. PHMSA intends for DOT to employ this remedy only when an on-site inspection is inadequate or a facility has the sophisticated personnel, equipment, and information technology to assist in the inspection or investigation. Qualified personnel may be asked to assist DOT when the inspectors open,

detain, or remove a shipment, if it is possible that a package may experience a leak, spill, or release. Proposed § 109.3(b)(4)(iv) provides this authorization.

Under proposed § 109.3(b)(5), an inspector would make a reasonable effort to assist in preparing a shipment to reenter transportation after opening or detaining the package if the shipment does not pose an imminent hazard and reentry in transportation is otherwise practicable. The inspector or a designee would reclose the package in accordance with the packaging manufacturer's instructions or other procedures approved by PHMSA's Associate Administrator for Hazardous Materials Safety. The inspector would then mark and certify that the shipment was opened and reclosed, and return the shipment for transportation, as quickly as practicable. Additionally, the inspector would assist in the safe and expeditious movement of a shipment that contains a perishable material once it is determined that the package does not present an imminent hazard. These measures, of course, presume that the package otherwise complies with the HMR. The Department's operating administrations would not be responsible for bringing an otherwise non-specification or non-compliant package into compliance and resuming its movement in commerce. If the package did not comply with the HMR, the fact that a DOT official opened it in the course of an inspection or investigation would not make DOT or its inspector responsible for bringing the package into compliance.

At this juncture, PHMSA is soliciting comments from interested parties about appropriate closure measures that would reseal opened packages. In particular, we seek comments from manufacturers of receptacles, containers, or other units that perform a containment function for hazardous material and hope to learn of equipment, instruments, and types of resealment that may be used to reclose a shipment. PHMSA is further requesting comments or suggestions from manufacturers, packaging companies, offerors, and carriers about the appropriate manner of reclosing a shipment containing a perishable material, including medical material such as radiopharmaceuticals and radionuclides, for prompt re-transportation. PHMSA also is contemplating using a special tape that would identify that the package was opened by a DOT inspector. The agency requests comments on whether tape or another adhesive would provide

adequate notice that a DOT inspector opened a shipment.

Proposed § 109.3(b)(6) addresses the situation in which a package is found to present an imminent hazard. This section would authorize the Administrator of each operating administration, or his/her designee, to issue an OOS order prohibiting the movement of a package until the imminent hazard is abated and the package has been brought into compliance with the HMR. Consequently, if an inspector determines that a package presents an imminent hazard, the carrier or other person in possession of, or responsible for, the package must remove the package from transportation until it is brought into compliance with the HMR. OOS orders ensure that if a package presents an imminent hazard, immediate action is taken to abate that hazard. Proposed paragraph (b)(6)(i) provides that a package subject to an OOS order may be moved from the place where it is first discovered to present an imminent hazard to the nearest location where remedial action can be taken to abate the hazard and bring the package into compliance with the HMR, provided that before the move, the agent issuing the OOS order is notified of the planned move. Proposed paragraph (b)(6)(ii) would require that the recipient of an OOS order notify the agent who issued the order when the package is brought into compliance with the HMR.

Proposed paragraph (b)(6)(iii) provides an appeal process for a recipient of an OOS order to challenge the issuance of the order. The appeal process proposed for OOS orders is consistent with the appeal process proposed for other types of emergency orders set forth in proposed § 109.5(e)–(h), discussed below.

Section 109.3(c) proposes that the operating administration would close the investigative file and inform the subject party of the decision when the agency determines that no further action is necessary. This provision clarifies when an investigation concludes and states that DOT will notify respondent that the file has been closed without prejudice to further investigation.

#### *Section 109.5 Emergency Orders*

Proposed § 109.5, which implements 49 U.S.C. 5121(d) authorizes DOT operating administrations to issue emergency orders to remove hazardous materials shipments from transportation in commerce without advance notice or an opportunity for a hearing. This section governs the issuance of emergency restrictions, prohibitions,

OOS orders, and recalls, all of which fit within the purview of an emergency order. (See above for PHMSA's meaning and application of the term "emergency order.")

The predicate for issuing an emergency order is a violation of the Hazmat Law or HMR, or an unsafe condition or practice, whether or not it violates an existing statutory or regulatory requirement, which amounts to or is causing an imminent hazard. PHMSA believes that such an extraordinary remedy is necessary to address emergency situations or circumstances involving a hazard of death, illness, or injury to persons affected by an imminent hazard. *Cf. United Transp. Union v. Lewis*, 699 F.2d 1109, 1113 (11th Cir. 1983) (FRA emergency order authority is necessary to abate unsafe conditions or practices that extend to hazard of death or injury to persons); 49 U.S.C. 46105(c) (FAA is authorized to issue orders to meet existing emergency relating to safety in air commerce); 49 U.S.C. 521(b)(5) (FMCSA permitted to order a motor carrier OOS when vehicle or operation constitutes an imminent hazard to safety, *i.e.*, "substantially increases the likelihood of serious injury or death if not discontinued immediately"). The Department intends that each operating administration issue an emergency order only after an inspection, investigation, testing, or research determines that an imminent hazard exists that requires exercising this enforcement tool to eliminate the particular hazard and protect public safety. *See* House Conf. Rep. No. 109–203 at 1080, 2005 U.S.C.C.A.N. at 714; *see generally* H.R. Rep. No. 96–1025, at 12, *reprinted in* 1980 U.S.C.C.A.N. 3830, 3837 ("purpose of the emergency powers provision is to vest administrative discretion in the Secretary to protect the public safety"). The order must articulate a sufficient factual basis that addresses the emergency situation warranting prompt prohibitive action. As proposed, the operating administrations would be conferred authority to take immediate measures to address a particular safety or security threat.

Proposed paragraph (a) outlines the critical elements that must be established before an agency may issue an emergency order. Principally, the order must be in writing and describe the violation, condition or practice that is causing the imminent hazard; enumerate the terms and conditions of the order; be circumscribed to abate the imminent hazard; and inform the recipient that it may seek administrative review of the order by filing a petition

with PHMSA's CSO. In other words, the order must be narrowly tailored to the discrete and specific safety hazard and identify the corrective action available to remedy the hazard. Due to the urgent nature of the action, a petitioner would have 20 calendar days to file the petition after the emergency order is issued. See 49 U.S.C. 5121(d)(3). (The time period that would apply is proposed at paragraph (a)(4), which adopts, in pertinent part, Fed. R. Civ. P. 6(a)). The proposed provision would ensure that the operating administrations employ uniform procedures and standards when issuing emergency orders and provides a degree of certainty and predictability to the regulated community about the requisite elements to establish a prima facie emergency order.

PHMSA proposes providing a party with administrative due process rights to seek redress of an emergency order, and thus, proposed paragraph (b) sets forth requirements for filing a petition for administrative review of an emergency order. The petition: (1) Must be in writing; (2) specifically state which part of the emergency order is being appealed; (3) include all information and arguments in support thereof; and (4) indicate whether a formal administrative hearing is requested. Should a petitioner request a hearing, the party must detail the material facts in dispute giving rise to the hearing request. The petition also must be addressed to PHMSA's CSO with a copy transmitted to the Chief Counsel of the operating administration issuing the emergency order. Proposed paragraph (c) provides that the Office of Chief Counsel of the operating administration that issued the emergency order may file a response, including appropriate pleadings, with the CSO within five days after receiving the petition. PHMSA proposes this short turnaround to enable the issuing operating administration to present evidence and argument supporting the emergency order. PHMSA notes that Congress mandated that DOT must resolve the petition within 30 days of its receipt unless the operating administration issues a subsequent order extending the original order, pending review of the petition. See 49 U.S.C. 5121(d)(4).

Under proposed paragraph (d), the CSO would review the petition and response and issue a decision within 30 days upon receipt of the petition if the petitioner does not request a formal hearing or the petition fails to assert material facts in dispute. The CSO's decision would constitute final agency action in this instance. Alternatively, if

the petition contains a request for a formal hearing and states material facts in dispute, the CSO would assign the petition to DOT's Office of Hearings. PHMSA thus proposes designating the CSO as the first line of review of emergency orders. It is possible that the CSO would amend, affirm, lift, modify, stay, or vacate the emergency order upon review.

PHMSA believes that the CSO should serve as the primary adjudicator of petitions. Designating a single decision maker to handle all petitions will promote consistency in the application of review standards. The CSO is the leading safety authority in PHMSA, which is the agency that issues the HMR, interprets the Hazmat Law and its implementing regulations, and oversees DOT's hazardous materials transportation program.

Proposed paragraphs (e) through (h) set out the administrative hearing procedures that the Department's Office of Hearings would employ. Upon receiving the petition from the CSO, the Chief Administrative Law Judge would assign it to an Administrative Law Judge (ALJ), who would schedule and conduct an "on the record" hearing under 5 U.S.C. 554, 556, and 557. PHMSA believes that a petitioner should be afforded a formal hearing that addresses the merits of a petition to ensure that a record is created in a proceeding that will form the basis for final agency action and judicial review, if necessary.

Paragraph (e) provides that an ALJ may administer oaths and affirmations, issue subpoenas as authorized by each operating administration's regulations, enable the parties to engage in discovery, and conduct settlement conferences and hearings to resolve disputed factual issues. PHMSA expects ALJs to conduct efficient and expeditious proceedings, including controlling discovery actions, to enable the parties to obtain relevant information and present material arguments at a hearing within the time parameters established.

Paragraph (f) permits a petitioner to appear in person or through an authorized representative. The representative need not be an attorney. The operating administration, however, would be represented by an attorney from its Office of Chief Counsel. Paragraph (g) delineates the service rules governing the emergency order and review process. Generally, parties may effect service by electronic transmission via e-mail (with the pertinent document in Adobe PDF format attached) or facsimile, certified or registered mail, or personal delivery. Additionally, the operating administration that issued the

emergency order must identify the list of persons, including the Department's docket management system, to receive the order and serve it by "hand delivery," unless such delivery is not practicable. The agency will also publish a notice of the emergency order in the **Federal Register** as soon as practicable after the order's issuance.

Paragraph (h) proposes requiring the ALJ to issue a report and recommendation when the record is closed. The decision must contain factual findings and legal conclusions based on legal authorities and evidence presented on the record. Critically, the decision must be issued within 25 days after the CSO receives the petition. Under paragraph (i), which codifies 49 U.S.C. 5121(d)(4), the emergency order will no longer be effective if the ALJ or CSO has not ruled on the petition within 30 days of the CSO's receipt of the petition, unless the Administrator who issued the emergency order determines in writing that the imminent hazard continues to exist. The order then would remain in effect pending the disposition of the petition unless stayed or modified by the Administrator. PHMSA maintains that this provision is necessary to ensure that the order is extended to abate the imminent hazard.

Paragraph (j) would provide that an aggrieved party may file a petition for reconsideration of the ALJ's report and recommendation within one day of the issuance of the decision. The CSO then must issue a final agency decision no later than 30 days from the receipt of the petition for review, unless a subsequent emergency order is issued. In that case, the CSO would have three calendar days to render the decision after receiving the petition for reconsideration. The CSO's decision on the merits of a petition for reconsideration would constitute final agency action.

Paragraph (k) would enable an aggrieved party to seek judicial review of either the CSO's administrative decision or the CSO's adoption of the ALJ's report and recommendation. Judicial review would be available in an appropriate U.S. Court of Appeals under 49 U.S.C. 5127, 49 U.S.C. 20114(c), 28 U.S.C. 2342, and 5 U.S.C. 701-706. All parties should note that the filing of a petition will not stay or modify the force and effect of final agency action unless otherwise ordered by the appropriate U.S. Court of Appeals.

Paragraph (l) would specify the computation of time in the adjudications process.

#### *Section 109.7 Emergency Recalls*

Section 109.7 implements 49 U.S.C. 5121(d). Generally, PHMSA received

new recall authority in HMSSTRA to work hand in hand with our previous authority under 49 U.S.C. 5103(b)(1)(A)(iii) to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Specifically, PHMSA proposes to implement the authority to recall packagings, containers, or package components which were improperly designed, manufactured, fabricated, inspected, marked, maintained, reconditioned, repaired, or tested but sold as qualified DOT packages, containers, or packaging components for use in the transportation of hazardous materials in commerce.

#### *Section 109.9 Remedies Generally*

In addition to seeking relief in Federal court with respect to an imminent hazard, this proposed section defines the need for general remedies available through litigation. As such, an Administrator may also request the Attorney General bring an action in the appropriate U.S. district court for all other necessary or appropriate relief, including, but not limited to, injunctive relief, punitive damages, and assessment of civil penalties as provided by 49 U.S.C. 5122(a). Proposed § 109.11 would authorize an Administrator to request DOJ to bring a cause of action in the appropriate U.S. district court seeking legal and equitable relief, including civil penalties, punitive damages, temporary restraining orders, and preliminary and permanent injunctions, to enforce the Hazmat Law, HMR, or an order, special permit, or approval issued.

#### **Rulemaking Analyses and Notices**

##### *A. Statutory/Legal Authority for This Rulemaking*

This NPRM is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce and under the authority of 49 U.S.C. 5121(e). If adopted as proposed, the final rule would revise PHMSA's inspection and enforcement procedures in PHMSA's regulations to implement 49 U.S.C. 5121(c) and (d), as amended by HMTSSRA. Specifically, this proposed rule implements the enhanced inspection and enforcement authority mandated by section 7118 by enabling DOT to open, detain, and remove packages from transportation where appropriate, and issue emergency orders limiting or restricting packages from

transportation. The NPRM carries out the statutory mandate and clarifies DOT's role and responsibility in ensuring that hazardous materials are being safely transported and promoting the regulated community's understanding and compliance with regulatory requirements applicable to specific situations and operations.

##### *B. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This NPRM is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget. This rule is also significant under the Regulatory Policies and Procedures of the DOT (44 FR 11034). A copy of the regulatory evaluation is available for review in the docket.

##### *C. Executive Orders 13132 and 13084*

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). As amended by HMTSSRA, 49 U.S.C. 5125(i) provides that the preemption provisions in Federal hazardous material transportation law do "not apply to any procedure \* \* \* utilized by a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material." Accordingly, this proposed rule has no preemptive effect on state, local, or Indian tribe enforcement procedures and penalties, and preparation of a federalism assessment is not warranted.

This NPRM has also been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

##### *D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have significant impact on a substantial number of small entities. Based on the assessment in the preliminary regulatory evaluation I hereby certify that, while the proposed rule will affect a substantial number of small businesses, there will be no significant economic impact. This proposal applies to offerors and carriers of hazardous materials, some of which are small

entities; however, there will not be any economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

*Potentially affected small entities.* The proposals in this NPRM will apply to persons who perform, or cause to be performed, functions related to the transportation of hazardous materials in transportation in commerce. This includes offerors of hazardous materials and persons in physical control of a hazardous material during transportation in commerce. Such persons may primarily include motor carriers, air carriers, vessel operators, rail carriers, temporary storage facilities, and intermodal transfer facilities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration, the definition of "small business" has the same meaning as under the Small Business Act (15 CFR parts 631–657c). Therefore, since no such special definition has been established, PHMSA employs the thresholds (published in 13 CFR 121.201) of 1,500 employees for air carriers (NAICS Subgroup 481), 500 employees for rail carriers (NAICS Subgroup 482), 500 employees for vessel operators (NAICS Subgroup 483), \$18.5 million in revenues for motor carriers (NAICS Subgroup 484), and \$18.5 million in revenues for warehousing and storage companies (NAICS Subgroup 493). Of the approximately 116,000 entities to which the proposals in this NPRM would apply (104,000 of which are motor carriers), we estimate that about 90 percent are small entities.

*Potential cost impacts.* The NPRM proposal to implement the enhanced enforcement and investigation authority applies to all persons subject to the HMR. We expect the exercise of this authority will produce a deterrent effect far beyond the number of packages actually detained, opened, or removed from transportation. Over a ten-year period, we estimate the proposed rule would result in the reduction of 40,299,701 undeclared shipments of hazardous material across three modes of transportation (air, rail, and highway), and the avoidance of 63 serious incidents and 2,104 non-serious incidents. The estimated costs to industry are fairly minimal; we estimate \$45,997 in total cost to the industry over ten years.

*Potential costs savings.* Although the potential cost of implementing this enhanced enforcement authority could total \$2,307,897 for the four operating administrations, the potential benefit

from avoiding incidents total \$9,697,748 over a ten-year period.

*Alternate proposals for small business.* In accordance with the Regulatory Flexibility Act, we also considered whether special standards should be developed to minimize the regulatory burden on small businesses. In the case of compliance standards, it is sometimes possible to establish exceptions or different requirements for small businesses without compromising the overall objectives of the rule. However, we have concluded that such relief is not appropriate for the rules at issue here, pertaining to inspection procedures and safety remedies. Although DOT may well consider companies' relative sizes in deciding how to allocate inspection resources, once an inspection or investigation is underway, the size of an individual entity has no proper bearing on the exercise of enhanced inspection and enforcement authority. In the case of a suspicious package, for instance, the risk to public safety and need for enforcement action does not depend on the size of the company responsible for the hazard.

#### E. Paperwork Reduction Act

PHMSA has analyzed this proposed rulemaking in accordance with the Paperwork Reduction Act of 1995 (PRA). The PRA requires Federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve Government performance, and improving the federal government's accountability for managing information collection activities. This proposal contains no new information collection requirements subject to the PRA as the requirements applicable to all collections of information conducted or sponsored by a federal agency do not apply to a collection of information "during the conduct of a civil action to which the United States or any official or agency thereof is apart, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities" (5 CFR 1320.4).

#### F. Unfunded Mandates Reform Act of 1995

The proposal in this NPRM would not impose unfunded mandates under the Unfunded Mandates Act of 1995. The proposed rule would not result in annual costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and

is the least burdensome alternative to achieve the objective of the proposed rule.

#### G. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

##### 1. Purpose and Need

Congress enacted HMTSSRA in part to combat the problem of undeclared hazardous materials shipments. The broader authority of HMTSSRA allows the Department to identify hazardous materials shipments and to determine whether those shipments are made in accordance with the HMR. Congress determined that this authority would equip DOT officials and inspection personnel with the necessary tools to accurately determine whether hazardous materials are being transported safely and in accordance with the relevant law and regulations. See Background section of the preamble to this NPRM, *supra*.

##### 2. Alternatives

Because this NPRM addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority would perpetuate the problem of undeclared hazardous material shipments and resulting incidents or releases. It would also leave PHMSA and other operating administrations without an effective plan to abate an imminent safety hazard.

##### 3. Analysis of Environmental Impacts

The selected alternative could result in decreasing the likelihood of an incident, or a release of hazardous material, e.g., explosives, flammables, or corrosives. These hazardous materials could ignite, leak, or react with other material, thereby causing fires and explosions in confined spaces such as aircraft or vessels. If such incidents

occurred while an aircraft or vessel is in transportation, the consequences would likely threaten human health and the environment. If hazardous material shipments are not properly marked, labeled, packaged, and handled, every person who comes into contact with the shipment could be at risk. Emergency responders would not be able to extinguish a fire in the most effective and timely manner because an undeclared shipment would not contain the correct hazard communications, thus possibly exacerbating the situation or prolonging the public's exposure to a release.

#### 4. Consultations and Public Comment

Before preparing this NPRM, we held a series of public meetings and invited all interested persons to offer comments on topics related to this proposed rule. We received no comments regarding environmental concerns.

#### H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### I. 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>.

#### List of Subjects in 49 CFR Part 109

Definitions, Inspections and investigations, Emergency orders, Imminent hazards, Remedies generally.

#### The Rule

In consideration of the foregoing, PHMSA proposes to add a new part 109 to Title 49, Subtitle B, Chapter 1, Subchapter A to read as follows:

### PART 109—INSPECTION AND INVESTIGATION PROCEDURES

#### Sec.

- 109.1 Definitions.
- 109.3 Inspections and investigations.
- 109.5 Emergency orders.
- 109.7 Emergency recalls.

109.9 Remedies generally.

**Authority:** 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 § 4 (28 U.S.C. 2461 note); Pub. L. 104–121 §§ 212–213; Pub. L. 104–134 § 31001; 49 CFR 1.45, 1.53.

### § 109.1 Definitions.

All terms defined in 49 U.S.C. 5102 are used in their statutory meaning. Other terms used in this part are defined as follows:

*Administrator* means the head of any operating administration within the Department of Transportation, and includes the Administrators of the Federal Aviation Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, and Pipeline and Hazardous Materials Safety Administration, to whom the Secretary has delegated authority in part 1 of this title, and any person within an operating administration to whom an Administrator has delegated authority to carry out this part.

*Agent of the Secretary or agent* means an officer, employee, or agent authorized by the Secretary to conduct inspections or investigations under the Federal hazardous material transportation law.

*Chief Safety Officer or CSO* means the Assistant Administrator of the Pipeline and Hazardous Materials Safety Administration.

*Emergency order* means an emergency restriction, prohibition, recall, or out-of-service order.

*Freight container* means a package configured as a reusable container that has a volume of 64 cubic feet or more, designed and constructed to permit being lifted with its contents intact and intended primarily for containment of smaller packages (in unit form) during transportation.

*Immediately adjacent* means a packaging that is in direct contact with the hazardous material or is otherwise the primary means of containment of the hazardous material.

*Imminent hazard* means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

*Objectively reasonable and articulable belief* means a belief based on particularized and identifiable facts that provide an objective basis to believe or suspect that a package may contain a hazardous material.

*Out-of-service order* means a written requirement issued by the Secretary, or a designee, that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, portable tank, or other package not be moved or cease operations until specified conditions have been met.

*Packaging* means any receptacle, including, but not limited to, a freight container, intermediate bulk container, overpack, or trailer, and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see § 173.403 of this subchapter.

*Perishable hazardous material* means a hazardous material that is subject to significant risk of speedy decay, deterioration, or spoilage.

*Properly qualified personnel* means a company, partnership, proprietorship, or individual who is technically qualified to perform designated tasks necessary to assist an agent in inspecting, examining, opening, removing, testing, or transporting packages.

*Remove* means to keep a package from entering the stream of transportation in commerce; to take a package out of the stream of transportation in commerce by physically detaining a package that was offered for transportation in commerce; or stopping a package from continuing in transportation in commerce.

*Safe and expeditious* means prudent measures or procedures designed to minimize delay.

*Trailer* means a non-powered motor vehicle designed for transporting freight that is drawn by a motor carrier, motor carrier tractor, or locomotive.

### § 109.3 Inspections and investigations.

(a) General. An Administrator may initiate an inspection or investigation to determine compliance with Federal hazardous material transportation law, or a regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto.

(b) Inspections and investigations. Inspections and investigations are conducted by designated agents of the Secretary who will, upon request, present their credentials for examination. Such an agent is authorized to:

(1) Administer oaths and receive affirmations in any matter under investigation.

(2) Gather information by any reasonable means, including, but not limited to, interviewing, photocopying, photographing, and video- and audio-recording in a reasonable manner.

(3) Serve subpoenas for the production of documents or other tangible evidence if, on the basis of information available to the agent, the evidence is relevant to a determination of compliance with the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law, or any court decree or order relating thereto. Service of a subpoena shall be in accordance with the requirements of the agent's operating administration as set forth in 14 CFR 13.3 (Federal Aviation Administration); 49 CFR 209.7 (Federal Railroad Administration), 49 CFR 386.53 (Federal Motor Carrier Safety Administration), and 49 CFR 105.45–105.55 (Pipeline and Hazardous Materials Safety Administration).

(4) When an agent has an objectively reasonable and articulable belief that a package offered for or in transportation in commerce may contain a hazardous material, the agent may:

(i) Stop movement of the package in transportation and gather information from any person to learn the nature and contents of the package;

(ii) Open any overpack, outer packaging, freight container, or other component of the package that is not immediately adjacent to the hazardous materials contained in the package and examine the inner packaging(s) or packaging components;

(iii) Remove the package and related packages in a shipment or a freight container from transportation in commerce when the agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard, provided the agent records this belief in writing as soon as practicable;

(iv) Order the person in possession of, or responsible for, the package to have the package transported to, opened, and the contents examined and analyzed by, a facility capable of conducting such examination and analysis; and,

(iv) Authorize qualified personnel to assist in the activities conducted under this paragraph (b)(4).

(5) If, after an agent exercises an authority under paragraph (b)(4), an imminent hazard is not found to exist, the agent shall assist in preparing the package for safe and prompt transportation, when practicable, by reclosing the package in accordance with the packaging manufacturer's

closure instructions or an alternate closure method approved by PHMSA's Associate Administrator for Hazardous Materials Safety; marking and certifying the reclosed package to indicate that it was opened and reclosed in accordance with this paragraph (b)(5); and returning the package to the person from whom the inspector obtained it, as soon as practicable. For a package containing a perishable material, the agent shall assist in resuming the safe and expeditious transportation of the package as soon as practicable after determining that the package presents no imminent hazard.

(6) If, after an inspector exercises an authority under paragraph (b)(4), and an imminent hazard is found to exist, the Administrator or his/her designee may issue an out-of-service order prohibiting the movement of the package until the package has been brought into compliance with Subchapter C of Title 49 of the Code of Federal Regulations. Upon receipt of the out-of-service order, the person in possession of, or responsible for, the package shall remove the package from transportation until it is brought into compliance:

(i) A package subject to an out-of-service order may be moved from the place where it was found to present an imminent hazard to the nearest location where the package can be brought into compliance, provided, that the agent that issued the out-of-service order is notified before the move.

(ii) The recipient of the out-of-service order shall notify the operating administration that issued the order when the package is brought into compliance.

(iii) Upon receipt of an out-of-service order, a recipient may appeal the decision of the agent issuing the order to PHMSA's Chief Safety Officer. A petition for review of an out-of-service order must meet the requirements of § 109.5(b), and the procedures set forth in § 109.5(c)–(h) apply.

(c) Termination. When the facts disclosed by an investigation indicate that further action is not necessary at that time, the Administrator will close the investigative file without prejudice to further investigation and notify the person being investigated of the decision.

#### § 109.5 Emergency orders.

(a) Determination of imminent hazard. When an Administrator determines that a violation of a provision of the Federal hazardous material transportation law, or a regulation or order prescribed under that law, or an unsafe condition or practice, constitutes or is causing an imminent hazard, as defined in § 109.1,

the Administrator may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without advance notice or an opportunity for a hearing. The basis for any action taken under this section shall be set forth in writing which must—

(1) Describe the violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Set forth the terms and conditions of the emergency order;

(3) Be limited to the extent necessary to abate the imminent hazard; and,

(4) Advise the recipient that it may request review of the emergency order by filing a petition for review with PHMSA's Chief Safety Officer within 20 calendar days of the date the order is issued.

(b) A petition for review must—

(1) Be in writing;

(2) State with particularity each part of the emergency order that is sought to be amended or rescinded and include all information, evidence and arguments in support thereof;

(3) State whether a formal hearing in accordance with 5 U.S.C. 554 is requested. The petition must specifically state the material facts in dispute giving rise to the request for a hearing; and,

(4) *Be addressed to:* Chief Safety Officer (ATTN: Office of Chief Counsel, PHC-10), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590, with a copy transmitted to the Chief Counsel of the operating administration issuing the emergency order. The petition for review may be hand delivered or sent by first-class mail, facsimile (202–366–7041), or electronically ([PHMSACHIEFCOUNSEL@dot.gov](mailto:PHMSACHIEFCOUNSEL@dot.gov)). A signed original and one copy of any petition for review must be personally delivered or mailed to: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(c) Response to the petition for review. An attorney designated by the Office of Chief Counsel of the operating administration issuing the emergency order may file a response, including appropriate pleadings, with the Chief Safety Officer within five calendar days of receipt of the petition by the Chief Counsel of the operating administration issuing the emergency order.

(d) *Chief Safety Officer Responsibilities:* Upon receipt of a petition for review of an emergency order, the Chief Safety Officer shall

immediately assign the petition for review to the Office of Hearings when the petition requests a formal hearing and states material facts in dispute. The Chief Safety Officer shall issue an administrative decision on the merits within 30 days of receipt of the petition when it does not request a formal hearing or fails to state material facts in dispute. In this case, the Chief Safety Officer's decision constitutes final agency action.

(e) Hearings—Formal hearings shall be conducted by an Administrative Law Judge assigned by the Chief Administrative Law Judge of the Office of Hearings. The Administrative Law Judge may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by the appropriate agency regulations (49 CFR 209.7, 49 CFR 105.45, 14 CFR 13.3, 49 CFR 386.53; and 49 U.S.C. 502 and 31133);

(3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures governing the hearings when appropriate;

(4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence when appropriate;

(5) Take or cause depositions to be taken;

(6) Examine witnesses at the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Convene, recess, adjourn or otherwise regulate the course of the hearing;

(9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and,

(10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised therein.

(f) Parties. The petitioner may appear and be heard in person or by an authorized representative. The operating administration issuing the emergency order shall be represented by an attorney designated by its respective Office of Chief Counsel.

(g) Service.

(1) Each petition, pleading, motion, notice, order, or other document required to be served under this section shall be served personally, by registered or certified mail, or electronically by e-mail or facsimile, except as otherwise provided herein. The emergency order shall identify the list of persons, including the Department's Docket Management System, to be served and may be updated as necessary. The emergency order shall also be published

in the **Federal Register** as soon as practicable after its issuance.

(2) Each order, pleading, motion, notice, or other document shall be accompanied by a certificate of service specifying the manner in which and the date on which service was made.

(3) The emergency order shall be served by "hand delivery," unless such delivery is not practicable.

(4) Service upon a person's duly authorized representative constitutes service upon that person.

(h) Report and recommendation. The Administrative Law Judge shall issue a report and recommendation at the close of the record. The report and recommendation shall:

(1) Contain findings of fact and conclusions of law and the grounds for the decision based on the material issues of fact or law presented on the record;

(2) Be served on the parties to the proceeding; and

(3) Be issued no later than 25 days after receipt of the petition for review by the Chief Safety Officer.

(i) Expiration of order. If the Chief Safety Officer, or the Administrative Law Judge, where appropriate, has not disposed of the petition for review within 30 days of receipt, the emergency order shall cease to be effective unless the Administrator issuing the emergency order determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist. The requirements of such an extension shall remain in full force and effect pending decision on a petition for review unless stayed or modified by the Administrator.

(j) Reconsideration.

(1) A party aggrieved by the Administrative Law Judge's report and recommendation may file a petition for reconsideration with the Chief Safety Officer within one calendar day of issuance of the report and recommendation. The opposing party may file a response to the petition within one calendar day.

(2) The Chief Safety Officer shall issue a final agency decision within three calendar days, but no later than 30 days after receipt of the original petition for review.

(3) The Chief Safety Officer's decision on the merits of a petition for reconsideration constitutes final agency action.

(k) Appellate review. A person aggrieved by the final agency action may petition for review of the final decision in the appropriate Court of Appeals for the United States as provided in 49 U.S.C. 5127. The filing of the petition

for review does not stay or modify the force and effect of the final agency.

(l) Time. In computing any period of time prescribed by this part or by an order issued by the Administrative Law Judge, the day of filing of the petition for review or of any other act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

#### **§ 109.7 Emergency recalls.**

PHMSA's Associate Administrator, Office of Hazardous Materials Safety, may issue an emergency order mandating the immediate recall of any packaging; packaging component; or container certified, represented, marked, or sold as qualified for use in the transportation of hazardous materials in commerce when the continued use of such item would constitute an imminent hazard. All petitions for review of such an emergency order will be governed by the procedures set forth at § 109.5(b).

#### **§ 109.9 Remedies generally.**

An Administrator may request the Attorney General to bring an action in the appropriate United States district court seeking temporary or permanent injunctive relief, punitive damages, assessment of civil penalties as provided by 49 U.S.C. 5122(a), and any other appropriate relief to enforce the Federal hazardous material transportation law, regulation, order, special permit, or approval prescribed or issued under the Federal hazardous material transportation law.

Issued in Washington, DC on September 26, 2008 under authority delegated in 49 CFR part 1.

**David K. Lehman,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E8-23248 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-60-P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 571**

[Docket No. NHTSA-2008-0157]

RIN 2127-AK15

#### **Federal Motor Vehicle Safety Standards; Motorcycle Helmets**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

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

**SUMMARY:** NHTSA is proposing to amend several aspects of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. Some of the amendments would help realize the full potential of compliant helmets by aiding state and local law enforcement officials in enforcing state helmet use laws, thereby increasing the percentage of motorcycle riders wearing helmets compliant with FMVSS No. 218. The amendments would do this by adopting additional requirements and revising existing requirements to reduce misleading labeling of novelty helmets that creates the impression that uncertified, noncompliant helmets have been properly certified as compliant.

The other amendments would aid NHTSA in enforcing the standard by specifying a quasi-static load application rate for the helmet retention system; revising the impact attenuation test by specifying test velocity and tolerance limits and removing the drop height requirement; providing tolerances for the helmet conditioning specifications; revising requirements related to size labeling and location of the DOT symbol; correcting figures 7 and 8 in the Standard; and updating the reference in S7.1.9 to SAE recommended practice J211.

**DATES:** You should submit your comments early enough to ensure that Docket Management receives them not later than December 1, 2008.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

• *Hand Delivery or Courier:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202-493-2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may contact Mr. Sean Doyle, Office of Rulemaking (E-mail: [sean.doyle@dot.gov](mailto:sean.doyle@dot.gov)) (Telephone: 202-493-0188) (Fax: 202-493-2739).

For legal issues, you may contact Mr. Ari Scott, Office of Chief Counsel (E-mail: [ari.scott@dot.gov](mailto:ari.scott@dot.gov)) (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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#### **I. Background**

##### *A. Overview of Motorcycle Safety Problem*

There is a pressing need for improvements in motorcycle safety. After falling steadily during the late 1980's and early 1990's, and leveling off in the mid-1990's, motorcycle rider fatalities and the related fatality rate have increased every year since 1997.<sup>1</sup> Fatalities increased 127 percent between 1997 and 2006 (from 2,116 deaths in 1997 to 4,810 deaths in 2006).<sup>2</sup> In 2006,

<sup>1</sup> National Center for Statistics & Analysis, National Highway Traffic Safety Administration, Traffic Safety Facts: 2006 Traffic Safety Annual Assessment-A Preview, at 1 (DOT HS 810 791). Washington, DC (July 2007), available at <http://www-nrd.nhtsa.dot.gov/Pubs/810791.PDF> and in the docket.

National Center for Statistics & Analysis, National Highway Traffic Safety Administration, Traffic Safety Facts 2005 Data: Motorcycles, at 1 (DOT HS 810 620). Washington, DC (2005), available at <http://www-nrd.nhtsa.dot.gov/Pubs/810620.PDF> and in the docket.

<sup>2</sup> *Ibid.*

motorcycle rider fatalities exceeded the number of pedestrian fatalities for the first time since NHTSA began collecting fatal motor vehicle crash data in 1975, and now account for 11 percent of all annual motor vehicle fatalities.<sup>3</sup>

A number of explanations have been offered for the steady increase in the last 10 years, including increases in motorcycle sales, increases in the percentage of older riders, and increases in engine size. However, the increase in the number of deaths resulting from motorcycle crashes has been disproportionately fast compared to the increases in the number of motorcycles on the road and the distance they are driven. Motorcycles make up about 2.4 percent of all registered vehicles and 0.3 percent of all vehicle miles traveled (VMT), but account for 11 percent of all traffic crash fatalities in 2006, compared to 5.0 percent in 1997. This represents a significant increase as a proportion of the annual loss of life in traffic crashes. In recent years, fatality rates for motorcycle riders have increased faster than the increase in motorcycle exposure (VMT on motorcycles as well as the number of registered motorcycles). The number of fatalities per 100 million VMT on motorcycles has more than doubled, increasing from 21 in 1997 to 42.5 in 2005. Similarly, the number of fatalities per 100,000 registered motorcycles increased from 55 in 1997 to 73.5 in 2005. Compared with a passenger car occupant, a motorcycle rider is 37 times more likely to die in a crash, based on vehicle miles traveled.

The National Transportation Safety Board (NTSB) recently made similar assessment of the motorcycle safety problem. The assessment came in a Safety Alert, "Alarming Rise in Motorcycle Deaths," issued by NTSB in September 2007:<sup>4</sup>

• Deaths from motorcycle crashes have more than doubled in the past 10 years—from 2,116 in 1997 to 4,810 in 2006—an alarming trend. Another 88,000 people were injured in motorcycle crashes in 2006.

• The yearly number of motorcycle deaths is more than double the annual total number of people killed in all aviation, rail, marine and pipeline accidents combined.

• Head injuries are a leading cause of death in motorcycle crashes.

<sup>3</sup> DOT HS 810 791, at 1.

<sup>4</sup> Available at [http://www.nts.gov/alerts/SA\\_012.pdf](http://www.nts.gov/alerts/SA_012.pdf).

*B. Benefits of Motorcycle Helmets and Motorcycle Helmet Use Laws*

Among the measures available for improving motorcycle safety, none is more effective than use of motorcycle helmets. The steadily increasing toll of motorcyclist fatalities would have been lower had all motorcyclists been wearing motorcycle helmets that meet the performance requirements issued by this agency. In potentially fatal crashes, helmets have an overall effectiveness of 37 percent in preventing fatalities.<sup>5</sup> According to the data for 2006, helmets saved an estimated 1,658 lives in that year. If there had been 100 percent helmet use among motorcycle riders, an additional 752 lives could have been saved that year.<sup>6</sup>

Again, in its September 2007 Safety Alert, the NTSB came to similar conclusions:

- DOT-compliant helmets are extremely effective. They can prevent

injury and death from motorcycle crashes.

- If you are in a crash without a helmet, you are three times more likely to have brain injuries.
- Wearing a helmet reduces the overall risk of dying in a crash by 37%.
- In addition to preventing fatalities, helmets reduce the need for ambulance service, hospitalization, intensive care, rehabilitation, and long-term care.
- Wearing a helmet does *not* increase the risk of other types of injury.

The value of helmet use can be demonstrated in other ways. Data from the agency's Fatality Analysis Reporting System (FARS) for the period 1995–2004 also show the importance of motorcycle helmets. Even though the percentage of riders who use motorcycle helmets is larger than the percentage of riders who do not, non-users suffer more fatal head injuries. From 2000 to 2002, an average of 35 percent of

helmeted riders who died suffered a head injury, while an average of 51 percent of the non-users who died suffered a head injury.<sup>7</sup>

Unfortunately, a significant percentage of motorcyclists either wear noncompliant helmets or do not wear any helmet at all. In 2006, 20 States and the District of Columbia required all motorcyclists to wear helmets. In those 21 jurisdictions, FMVSS No. 218-compliant helmets were used by 68 percent of motorcyclists; non-compliant helmets were used by 15 percent of motorcyclists; and no helmets were used by an estimated 17 percent of motorcyclists. Comparatively, in the 30 States with partial or no helmet use laws, only 37 percent of motorcyclists used FMVSS No. 218-compliant helmets; 13 percent used non-compliant helmets; and 50 percent did not use a helmet at all.<sup>8</sup> These data are presented below in tabular form:

| Motorcyclists  | States with a helmet use law | States without a helmet use law |
|--|------------------------------|---------------------------------|
| Percentage using FMVSS No. 218 compliant helmets ..... | 68                           | 37                              |
| Percentage using non-compliant helmets .....           | 15                           | 13                              |
| Percentage not using any helmet .....                  | 17                           | 50                              |

This data shows that a considerable number of motorcyclists both in states with and without helmet use laws are wearing non-compliant helmets. As discussed below, such helmets do not provide adequate protection.

The noncompliant helmets are commonly called “novelty” helmets. They are not properly constructed for highway use, and typically lack the strength, energy absorption capability, and size necessary to protect their users. They do not meet the safety requirements of FMVSS No. 218 and are not certified as such. In fact, recent compliance test data on novelty helmets showed that they failed all of the FMVSS No. 218 performance requirements.<sup>9</sup> Manufacturers of these helmets frequently include disclaimers that contend the helmets are not intended for protecting the persons who wear them from injury. These manufacturers claim that they are not intended for highway use. Nonetheless, as the above table shows, a significant

proportion of motorcyclists use novelty helmets on the highway.

NHTSA is making efforts to gather more specific data in this area. Among other efforts to generate the information necessary to improve highway safety, the 3rd Edition of the Model Minimum Uniform Crash Criteria (MMUCC) Guideline, which aims to provide a data set for describing crashes of motor vehicles, has been revised to characterize if motorcyclists involved in crashes were wearing 218-compliant helmets, other helmets, or no helmets.

*C. Provisions of FMVSS No. 218 Addressed in This Rulemaking*

The purpose of FMVSS No. 218 is to reduce deaths and injuries to motorcyclists and other motor vehicle users resulting from head impacts. To do so, the standard establishes minimum performance requirements for helmets. These requirements include three performance tests: (1) An impact attenuation test; (2) a penetration test;

and (3) a retention system test; as well as various labeling requirements.

The impact attenuation test is designed to ensure that helmets retain structural integrity and attenuate impact energy during a variety of crash scenarios. The test measures acceleration imparted to an instrumented test headform on which a complete helmet is mounted. The helmet/headform combination is dropped in a guided free fall upon either a fixed hemispherical anvil or a fixed flat anvil.

The penetration test simulates a head impact with a piercing object. This test is conducted by dropping a penetration test striker in guided free fall, with its axis aligned vertically, onto the outer surface of the complete helmet when mounted on a headform.

The retention system test is a test designed to help ensure the helmet remains securely fastened to the rider's head. It is conducted by applying a tensile load to the retention assembly.

<sup>5</sup> DOT HS 810 620, at 6.

<sup>6</sup> Ibid.

<sup>7</sup> National Center for Statistics & Analysis, National Highway Traffic Safety Administration, Technical Report: Crash Stats, Bodily Injury Locations in Fatally Injured Motorcycle Riders, DOT HS 810 856, October 2007.

<sup>8</sup> National Center for Statistics & Analysis, National Highway Traffic Safety Administration, Traffic Safety Facts Research Note: Motorcycle Helmet Use in 2007—Overall Results (September 2007) (DOT HS 810 840). Washington, DC, available at <http://www-nrd.nhtsa.dot.gov/Pubs/810840.PDF> and in the docket.

<sup>9</sup> National Highway Traffic Safety Administration, Traffic Safety Facts Research Note: Summary of

Novelty Helmet Performance Testing (DOT HS 810 752). Washington, D.C.: Office of Behavioral Safety Research, National Highway Traffic Safety Administration (Apr. 2007). Available at: [http://www.nhtsa.gov/portal/nhtsa\\_static\\_file\\_down\\_loader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Studies%20%20Reports/Associated%20Files/Novelty\\_Helmets\\_TSF.pdf](http://www.nhtsa.gov/portal/nhtsa_static_file_down_loader.jsp?file=/staticfiles/DOT/NHTSA/Traffic%20Injury%20Control/Studies%20%20Reports/Associated%20Files/Novelty_Helmets_TSF.pdf).

For each test, the helmet is conditioned in one of four different ways prior to testing. These include: (1) An ambient condition; (2) a low temperature condition; (3) a high temperature condition; and (4) a water immersion condition.

Labeling requirements are also set forth in Standard No. 218. These require that the manufacturer label each helmet permanently and legibly with the manufacturer's name or identification, precise model designation, size, month and year of manufacture, and instructions to the purchaser. The manufacturer must permanently label each helmet with the "DOT" symbol, which constitutes the manufacturer's certification that the helmet conforms to the applicable FMVSSs. Standard No. 218 also sets forth the requirements and acceptable locations of these labels.

#### D. Current Enforceability Issues

This notice addresses several issues relating to the enforceability of state mandatory helmet laws and FMVSS No. 218. The first issue relates to the difficulties that States have had in establishing that some motorcyclists are using helmets that have not been certified to the Federal Standard. A second issue relates to the inability of some helmet manufacturers to locate the certification label as required by the standard due to the presence of edge rolls on helmets. Third, there have been issues relating to determinations of noncompliance in the agency's own testing of helmets under the guidelines in FMVSS No. 218.

#### 1. State Motorcycle Helmet Use Laws

The first issue concerns the use of "novelty" helmets by motorcyclists operating on the highway. In order to reap the benefits of compliant helmets, better enforcement against the use of novelty helmets by motorcyclists is needed. Novelty motorcycle helmets are not certified by their manufacturers as compliant with FMVSS No. 218 and offer the wearer no protection against injury.<sup>10</sup> Some motorcyclists wearing novelty helmets have been affixing "DOT" symbol stickers to their helmets to create the appearance of properly certified, compliant helmets. These stickers closely resemble the "DOT" certification symbol required by FMVSS No. 218 and can be purchased from

<sup>10</sup> Recent compliance test data on novelty helmets showed that they failed all of the FMVSS No. 218 performance requirements. (Compliance test results can be found at <http://www-odi.nhtsa.dot.gov/tis/index.cfm>). In fact, in all tests performed by the Office of Vehicle Safety Compliance (OVSC), novelty helmets were found to be inadequate in offering their users even minimal protection during a crash.

stores selling novelty helmets or from online retailers.

The ability of novelty helmet users to affix inexpensive, easy-to-obtain labels resembling legitimate certification labels has complicated the efforts of state and local law enforcement personnel to enforce requirements for the use of properly certified helmets. They make it difficult for law enforcement officials in states with helmet use laws to determine whether or not a rider is wearing a helmet certified to FMVSS No. 218. The stickers make it difficult to prove whether or not a motorcycle wearer is deliberately flouting mandatory helmet use laws by wearing a novelty helmet with a misleading "DOT" label that improperly suggests the helmet is certified.<sup>11</sup> The use of these labels provides the wearer with a plausible basis for the assertion that he or she believes that the helmet he or she is using has been certified to the Federal standard. Further, sellers of these labels, which currently merely contain the letters "DOT," attempt to avoid any responsibility for their sale and use by asserting that the labels are not counterfeit certification labels, but merely labels bearing letters that stand for "Doing Our Thing."<sup>12</sup> As a result, application of these stickers to non-compliant helmets enables motorcyclists to avoid arrest and penalties in situations where state and local helmet laws require the use of a certified DOT-compliant motorcycle helmet.

In addition to this problem, improper use of the "DOT" symbol on non-complying helmets places motorcycle helmet manufacturers that design, test, and certify their helmets to FMVSS No. 218 requirements at a financial disadvantage, as novelty helmets do not undergo the same manufacturing or testing procedures to ensure their effectiveness in a crash, and thus can be marketed to unwary buyers as inexpensive alternatives to properly-certified helmets.

<sup>11</sup> For example, California law provides that when a motorcycle helmet has a DOT sticker, a state law enforcement officer can cite a motorcyclist for wearing a non-compliant helmet only if the helmet has been shown not to comply with the Federal standard and the motorcyclist has been shown to have actual awareness of this non-compliance. *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1499 (9th Cir. 1996). If a California law enforcement officer cites a motorcyclist based only upon his subjective belief that a helmet does not comply, without regard to the motorcyclist's actual knowledge of whether or not the helmet is compliant, the citation is invalid. *Id.* at 1499–1500.

<sup>12</sup> For an example of a "DOT" label being sold as a "Doing our Thing" sticker, see <http://www.chopperstickers.com/DOT-Sticker-pr-130.html>.

#### 2. FMVSS No. 218

NHTSA has had several types of problems with enforcing FMVSS No. 218. One of them involves the requirement regarding the location of the certification labels. During FY 2000–2003, NHTSA has found that 14 percent of the motorcycle helmets tested for compliance did not comply with the labeling requirements of S5.6(e) of the standard because the "DOT" symbol on these helmets was slightly above the required location. Paragraph S5.6(e) mandates that the horizontal centerline of the certification label be located between 1 $\frac{1}{8}$  inches and 1 $\frac{3}{8}$  inches from the lower edge of the helmet. This is partly because the helmet manufacturers have been concerned that making design changes to the helmet so that the "DOT" symbol could be placed in the required location would affect the helmet's performance. In instances in which the manufacturer demonstrated that it placed the symbol as close to the required location as possible, NHTSA chose not to take action against the manufacturer.

The other main issue concerns the enforceability of determinations of noncompliance with the performance requirements in FMVSS No. 218. During fiscal year (FY) 2002 and 2003 compliance testing, the agency discovered ambiguities in the language of the impact attenuation test and the retention test when testing helmets manufactured by NexL Sports Products (NexL). NHTSA compliance testing found that NexL's helmets failed to meet the performance requirements of FMVSS No. 218 on helmet impact attenuation, penetration, and retention.

In its response to the agency's finding of noncompliance, NexL claimed that the agency's impact attenuation tests were invalid because the agency violated S7.1.4 of the standard by testing the helmets at velocities lower than the minimum required 19.7 ft/s (6 m/s). NHTSA found that the helmets did not comply with the impact attenuation requirements of FMVSS No. 218 during agency testing, which is typically conducted at speeds somewhat less than 19.7 ft/s. Because the impact attenuation test, as written, requires a minimum impact speed of 19.7 ft/s, the agency determined that this language could be ambiguous.

With regard to the retention test, NexL stated that it tested its helmets at the required static load condition, and that its testing did not result in any displacement failures. In its investigation, NHTSA found that NexL was able to achieve passing results by adjusting the load application rate of the

test equipment until a passing displacement result (less than one inch, or 2.54 cm, of displacement) was achieved. In other words, by applying the required tensile load to the helmet at one rate, NexL was able to achieve a passing result, while in a similar test where the load was applied at a different rate, NHTSA results showed a noncompliance. Because the rate of application of the static load was ambiguous in the standard, NHTSA decided not to undertake an enforcement action.

In order for NHTSA to be better able to take enforcement actions in these types of situations, both performance tests (impact attenuation and retention system) need to be revised to make them less ambiguous. Specifically, for the impact attenuation test, a velocity range needs to be specified; and with regard to the retention test, a rate of load application must be specified. It is believed that these changes will provide clearer guidance to manufacturers conducting tests specified in FMVSS No. 218, as well as enable NHTSA to better undertake enforcement actions when a noncompliance is discovered.

## II. The Proposed Rule<sup>13</sup>

### A. Summary of Key Proposed Changes

#### 1. Labeling Proposal To Reduce Misleading Labeling of Novelty Helmets

We are proposing three requirements for helmet certification labeling: (1) The application of a "DOT" symbol water decal to the helmet beneath clear coating; (2) lettering on that decal indicating the manufacturer's name and/or brand name and the helmet model designation in the space above the "DOT" symbol; and (3) the word "certified" in a horizontally centered position beneath the "DOT" symbol on that decal.

#### 2. Size Labeling and Location of the "DOT" Certification Label

The agency is proposing that the required label on helmets be positioned such that the horizontal centerline of the DOT symbol is located between one and three inches (2.5–7.6 cm) from the lower edge of the helmet. In addition, the agency is proposing that helmets be labeled with a "discrete size," which will correspond to the appropriate test headform.

<sup>13</sup>On August 27, 2007, the ASTM International subcommittee on headgear and helmets petitioned NHTSA to make various updates to FMVSS No. 218. Certain recommended actions in the ASTM petition are addressed in this notice, and the agency will evaluate the merits of the other recommendations at a later time.

#### 3. Retention Test

The agency is specifying a load application rate for the retention test. In addition, in light of this requirement, we are reclassifying the retention test as a quasi-static test, instead of a static test.

#### 4. Impact Attenuation Test

NHTSA is proposing to specify test velocity and tolerance limits for the impact attenuation test. Specifically, we are proposing that the test velocity be specified any speed between 15.7 ft/s to and including 18.4 ft/s (from 4.8 m/s to and including 5.6 m/s) for the impact on the hemispherical anvil, and any speed from 18.4 ft/s to and including 21.0 ft/s (from 5.6 m/s to and including 6.4 m/s) for the impact on the flat anvil. In addition, we are proposing to remove the drop height requirement from the impact attenuation test.

#### 5. Helmet Conditioning Tolerances

NHTSA is proposing to set tolerances for the helmet conditioning procedures. For the ambient condition, the range is any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) and any relative humidity from 30 to and including 70 percent. For the low temperature condition, the range is any temperature from 5 °F to and including 23 °F (from –15 °C to and including –5 °C). For the high temperature condition, the range is any temperature from 113 °F to and including 131 °F (from 45 °C to and including 55 °C). For the water immersion test, the range for the water temperature is from 68 °F to and including 86 °F (from 20 °C to and including 30 °C). In addition, NHTSA is proposing that the 12 hour duration be classified as a minimum duration.

### B. Proposals To Aid Enforcement of State Motorcycle Helmet Use Laws

The proposed rule would establish additional requirements for certification labels that would entail processes that are inexpensive for the helmet manufacturer, but would be more difficult and expensive for those who may be producing false "certification" labels. The new requirements would also help consumers and law enforcement personnel distinguish between certified and uncertified helmets, facilitating the enforcement of state and local helmet laws. The proposed additional requirements would make it difficult for stores selling misleading "DOT" labels to claim that they did not intend to sell labels indicating certification, but were merely

selling "Doing Our Thing" stickers.<sup>14</sup> It is difficult to establish a plausible reason such a sticker would include manufacturing information or the word "certified." It would then be clear that any store selling a sticker with the proposed labeling requirements would be selling labels intended to deceive law enforcement officials about whether a helmet is certified. The above enforcement benefits can be obtained without imposing an undue burden upon motorcycle helmet manufacturers. Most important, the additional labeling requirements should result in a safety benefit through the increased use of proper head protection for motorcycle riders.

NHTSA is proposing the use of a water decal for the "DOT" symbol which would be affixed to the motorcycle helmet before the shell's clear coating is applied. Additionally, the label would be required to bear lettering indicating the manufacturer's name or brand name and the helmet model designation in the space above the "DOT" symbol, as well as the word "certified" in a horizontally centered position beneath the "DOT" symbol. These additional requirements would make production of labels that create the misleading impression that a helmet is properly certified more difficult and expensive, which would both deter the production and sale of such labels and help law enforcement officers enforce state helmet use laws.

#### 1. Current Requirements for Certification Labeling

The current labeling standard imposes limited requirements regarding certification labeling. Aside from the size, location, and contrasting color, the configuration of the symbol is not specified. Motorcycle helmet manufacturers are required to affix the certifying "DOT" symbol to the outer surface of the helmet. The color of the symbol's lettering must contrast with the background. The "DOT" letters must be at least 3/8 inch (1 cm) high, centered laterally with the horizontal centerline of the symbol located a minimum of 1 1/8 inches (2.9 cm) and a maximum of 1 3/8 inches (3.5 cm) from the bottom edge of the posterior portion of the helmet.

<sup>14</sup>Many merchants who sell "DOT" stickers for novelty motorcycle helmets state that the stickers are not intended to be counterfeit certification labels, and that DOT stands for "Doing Our Thing." However, the agency is not aware that the labels are significantly used for any purpose other than application to novelty helmets. See, <http://www.chopperstickers.com/DOT-Sticker-pr-130.html>.

## 2. Proposed Upgrades to the Certification Labeling Requirements

NHTSA proposes several additional requirements for the certification labeling of motorcycle helmets. These requirements include: (1) The application of a "DOT" symbol water decal to the helmet beneath the clear coating; (2) the manufacturer's name or brand name and the helmet model designation in the space above the "DOT" symbol; and (3) the word "certified" in a horizontally centered position beneath the "DOT" symbol. These proposals are further described in the following sections. The appendix also provides illustrations of the current label, as well as labels that would comply with the proposed requirements.

The agency's proposals regarding the issue of misleading labels on novelty helmets are based on substantial analysis of the needs of law enforcement personnel and the concerns of manufacturers. In 2005, NHTSA's Office of Traffic Injury Control (TIC) and Office of Vehicle Safety Compliance (OVSC) conducted an informal telephone survey of seven law enforcement offices,<sup>15</sup> a law enforcement organization,<sup>16</sup> and five motorcycle helmet manufacturers<sup>17</sup> to discuss the problem of misleading "DOT" symbols. Respondents were asked their opinion on various approaches to the problem, the advantages and disadvantages of suggested approaches, and on other changes in the requirements that could help identify noncompliant helmets. Additionally, NHTSA published a Motorcycle Safety Program Plan on July 3, 2006.<sup>18</sup> This plan discussed—among other topics—proposed initiatives to amend FMVSS No. 218 to address the problem of misleading labeling.

### a. Application of a "DOT" Symbol Water Decal

In lieu of the current typical practice of applying a simple certification sticker with adhesive to the outer surface of a helmet, NHTSA proposes requiring the application of a "DOT" symbol water decal to the helmet and then the

application of a layer of clear coating over the decal and the entire outer surface of the helmet. Clear coating is usually the final step in motorcycle helmet production. The agency believes that all current FMVSS No. 218-compliant helmets have clear coating. Clear coating over the "DOT" symbol would result in a smooth surface that is visually and tactilely different from a sticker applied to the surface after the clear coating process is completed.

Requiring a water decal under clear coating would help make the production of misleading "DOT" symbols substantially more difficult. The agency believes that the fabrication of water decals for application under clear coating can only be done by a limited number of printing vendors who require a set-up charge that is usually over \$1,000 for even the most simplistic design. Affixing the water decal would also require a hydration and dehydration (wetting and drying) process, while affixing a counterfeit "DOT" symbol currently requires merely the attachment of a sticker using some type of adhesive. The process would not be burdensome for manufacturers because they use this same process to add designs to the helmet. NHTSA believes that incorporating this approach would cost manufacturers between one and two cents per helmet, but invites comment on the issue.

NHTSA acknowledges that there are some disadvantages to the use of a water decal. While production of misleading "DOT" symbols would become more expensive, it would not necessarily become cost prohibitive. Currently, the required "DOT" symbol can be locally fabricated in sheets of 50 stickers for the price of about one dollar. If many label manufacturers grouped together to amortize the set-up charges for water decals, they might reach a similar cost acceptable threshold.

Another potential disadvantage is that clear coating does not adhere to leather shells. However, NHTSA is not aware of any leather-shell motorcycle helmet on the market that has been certified as complying with FMVSS No. 218. If a manufacturer develops and produces a leather-shell helmet that meets the performance requirements of FMVSS No. 218, we would consider amending the standard to provide a more appropriate alternative labeling method for leather-shell helmets, such as molding or embossing. The agency specifically invites comment on this issue.

### b. Addition of Lettering Indicating the Manufacturer and the Helmet Model Designation

As noted above, Standard No. 218 requires that the manufacturer label each helmet permanently and legibly with the manufacturer's name or identification, precise model designation, size, month, and year of manufacture. The manufacturer must also permanently label each helmet with the "DOT" symbol, which constitutes the manufacturer's certification that the helmet conforms to the applicable FMVSSs.

NHTSA proposes to require that some of this information be placed on the label bearing the "DOT" symbol since it would make counterfeiting of the certification label more difficult and helmet use law enforcement easier. Manufacturers would be required to include the manufacturer's name and/or brand name and the helmet model designation on the label above the "DOT" symbol. FMVSS No. 218 paragraph S5.6.1 already provides that "[e]ach helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or other permanent part, with the following: (a) Manufacturer's name or identification; (b) precise model designation; (c) size; and (d) month and year of manufacture." While S5.6.1 requires a label with this information, this label is often placed on the inside of the helmet. The proposed certification labeling requirement would then let state law enforcement officials see this information on the outside of the helmet, without having to first ask a motorcyclist to remove a helmet. With the exception of the addition of the word "certified" to the certification label, no additional information is being added to the helmet as a whole.

Requiring the inclusion of the helmet manufacturer's name and/or brand name and precise model designation on the certification label would force counterfeiters either to fabricate manufacturer names or to use existing trademarks, thereby infringing upon them. The manufacturer whose trademark has been infringed could take action against the counterfeiter under trademark law. Should the counterfeiter use a false manufacturer name and/or brand, law enforcement officials familiar with motorcycle helmets may be able to identify these counterfeit labels. NHTSA believes that adding this information to the certification label would cost manufacturers approximately one cent per helmet, but invites comment on the issue.

<sup>15</sup> The seven law enforcement offices surveyed were Pittsburgh Bureau of Police; Louisiana State Police; Pennsylvania Department of Transportation; Canadian Officers; Riverside, California Police Department; Nebraska State Police; and the Maryland Department of Transportation.

<sup>16</sup> The law enforcement organization surveyed was the American Association of Motor Vehicle Administrators, Law Enforcement Committee.

<sup>17</sup> The five manufacturers surveyed were AFX North America, Inc.; Shoei Safety Helmet Corp.; Zamp & Associates LLC; Wombat Trading Company, Inc.; and Soaring Helmets Corp., Inc.

<sup>18</sup> Available at: <http://www.nhtsa.dot.gov/people/injury/pedbimot/motorcycle/MotorcycleSafety.pdf>

As for disadvantages, the agency recognizes that counterfeiting is still possible under this approach. Also, depending on the length of the name, it may be more difficult for some manufacturers to apply their name above the "DOT" symbol.<sup>19</sup> The agency specifically requests public comment regarding a requirement to place the manufacturer name and/or brand name and model designation on the label and regarding the location in which that information should be placed on the label. NHTSA is particularly interested in obtaining views as to whether placing the proposed information on the label would best serve the purpose of reducing counterfeit labels and the false or misleading certifications of helmets.

#### c. Addition of the Word "Certified" Under the "DOT" Symbol

NHTSA also proposes requiring the word "certified" in a horizontally centered position under the "DOT" symbol. The advantage to this approach is that it would clearly distinguish certified helmets from uncertified helmets bearing a label that merely bears the letters "DOT." It also enhances the possibility of taking legal action against responsible parties under the Vehicle Safety Act, 49 U.S.C. 30115 or other applicable Federal or state laws. If the word "certified" were included on a label, those persons either producing, selling, or applying such misleading labels could not plausibly claim that "DOT" meant "Doing Our Thing" and not "Department of Transportation." Their intent to mislead would be undeniable.

#### d. Letters/Numbers

The NPRM proposes a minimum height for the lettering and numbering of .09 inch (.24 cm), but no limit on the choice of font.<sup>20</sup> To be consistent with the rest of the standard, NHTSA proposes using English and metric units for the height requirement rather than a minimum point font.<sup>21</sup> Nine hundredths of an inch (.24 cm) is the minimum height NHTSA currently requires for lettering on motor vehicle certification

labels.<sup>22</sup> The agency is unaware of any need to change this size and believes it provides legibility for a law enforcement officer who has stopped a motorcycle rider and wishes to determine whether the rider is using a helmet certified to FMVSS No. 218.

While the requirement to place some of the information on the certification label would make it necessary to use a larger label, NHTSA believes that this would increase the cost of compliance only slightly. Currently, the only requirement for the certification label is that the "DOT" symbol be placed on it. Since the symbol has a required minimum size of 3/8-inch (1 cm), that requirement effectively defines the minimum size of current labels. However, an examination of several certification labels<sup>23</sup> showed that they were somewhat larger due to the area around the lettering. Under the new requirements, some information currently placed on another label will be required to be placed on certification label, thereby increasing the size of the latter label. Depending on the length of the manufacturer's name (and/or brand name) and model, the labels could become substantially larger than their current size. However, we do not expect the increased size of the label to contribute substantially to the cost or difficulty of adding the water decal. Additionally, as we noted above, the manufacturer's name and model designation are already required to be marked on the helmet in an unspecified location under S5.6.1 of the standard. Thus, the cost of using a larger certification label should be offset by the opportunity to reduce the size of the separate label on which the information was previously placed.

#### 3. Alternatives Considered

The agency considered a variety of other alternatives when developing the proposals to upgrade the certification labeling requirements.<sup>24</sup> While we have

<sup>22</sup> 49 CFR 567.4(k)(4).

<sup>23</sup> The helmets examined included a Skid Lid helmet (5/8-inch-high certification label); Rodia helmet (5/8-inch-high certification label); ACC helmet (7/8-inch-high certification label); and a JIX model 200 helmet (5/8-inch-high certification label).

<sup>24</sup> We note that NHTSA explored the possibility of requiring the use of the DOT official seal instead of, or in addition to, the currently-used "DOT" symbol on the certification label. (The DOT seal contains the DOT logo of a triskelion figure representing land, air, and sea transportation and with the words "Department of Transportation" and "United States of America" surrounding the logo.) However, in researching this possibility, NHTSA determined that DOT Order 1000.14A gives authorization for its use only to DOT officials. While this authority may be re-delegated, the re-delegation must "be limited to the minimum number consistent with essential requirements, to

not chosen to include these alternatives in the proposed regulatory text, we solicit public comment on whether any of them should be included in the final rule.

#### a. Sewing the "DOT" Symbol to the Chinstrap

NHTSA also considered requiring manufacturers to sew the "DOT" symbol into the motorcycle helmet chinstrap. Manufacturers that endorsed this approach in their responses to the survey suggested sewing a "DOT" symbol into the chinstrap every two to three inches. This task could be easily performed in the original helmet production. The sewn-in symbol would also be difficult for counterfeiters to falsify in the field because it would require removing the chinstrap from the helmet and then replacing it either by a stitching and/or riveting method. NHTSA has no indication that all motorcycle helmet chinstraps are riveted. However, several manufacturers indicated that they believe that riveting is the only method used to secure the chinstrap assembly to the helmet shell, regardless of whether or not the helmet complies with FMVSS No. 218.

Law enforcement officers, however, stated that they would have difficulty seeing a "DOT" symbol sewn into a motorcycle helmet chinstrap (if, for example, the "DOT" symbol were on the inside of strap or near the wearer's chin). Further, the sewn "DOT" symbol could make the chinstrap stiffer in the area of the stitching. Those areas might be more likely to slip under load if one of them were engaging the double D-rings.<sup>25</sup> Because of these possible problems, NHTSA tentatively concluded not to pursue this approach.

#### b. Molding or Embossing the "DOT" Symbol Into the Helmet

Another approach NHTSA considered was requiring manufacturers to mold a permanent "DOT" symbol into the motorcycle helmet shell during the manufacturing process. This would enhance compliance and enforcement actions against counterfeiters because a novelty helmet, in order to comply, the

avoid misuse of the seal and to minimize procurement requirements for impression dies of the seal." Further, the DOT seal cannot be used "[i]n any manner which implies Departmental endorsement of commercial products." Requiring every motorcycle helmet manufacturer to use the official DOT seal would not be consistent with these limitations. Therefore, NHTSA cannot require motorcycle helmet manufacturers to use the official DOT seal on the certification label.

<sup>25</sup> A double D-ring is two 'D'-shaped steel rings used as a fastener (instead of a buckle) to secure a motorcycle helmet on a rider's head with chinstrap webbing material.

<sup>19</sup> A survey of over 45 different helmet brand names and over 100 different models provided a range in length of 3–10 characters for brand name (including spaces) and 2–12 characters for model name (including spaces).

<sup>20</sup> In determining what would be a reasonable font size and type to require for the lettering, NHTSA looked at several other NHTSA regulations that required some form of labeling. The majority of the regulations specified a font size but not a font type. Similarly, NHTSA believes it is preferable to specify the required size of the lettering, while permitting manufacturers to use the font type of their choosing.

<sup>21</sup> 3/32 of an inch is approximately 10 point font.

“DOT” symbol would have to be molded into the novelty helmet at the time of manufacture.

Several drawbacks, however, persuaded NHTSA to decide tentatively against the molding or embossing approach. First, NHTSA believes that this method might be too much of an economic burden for manufacturers. Second, NHTSA was concerned because the manufacturers said that sharp radii, which would exist at the interface between the molded surface of the shell and the raised or recessed letters of the “DOT” symbol, would cause production problems in the molding and finishing processes, leading to higher manufacturing costs. According to the manufacturers, the molding or embossing process would cause some helmets to be malformed, and raise scrapage rates from about 1 percent to about 5 percent for plastic constructed helmets, and from about 1 percent to 15 percent for fiberglass constructed helmets. Problems would likely range from purely aesthetic malformations to significant structural issues. Accordingly, NHTSA tentatively concluded that molding or embossing would not be a cost effective approach to prevent counterfeiting.

#### c. Using a Hologram “DOT” Symbol

Using a hologram “DOT” symbol would make counterfeiting more difficult, and it would also permit each manufacturer to select its own design. A hologram would, however, be much more expensive than water decals or the “DOT” stickers currently being used. Based on its understanding of the market, NHTSA estimates that “DOT” holograms would cost manufacturers about 70 cents or more per helmet. NHTSA tentatively concluded that this approach could impose too much of an economic burden upon manufacturers, especially considering the fact that other effective methods to reduce counterfeiting are available that impose a lower burden on manufacturers.

#### C. Size Labeling and Location of the “DOT” Certification Label

##### 1. Location of the Certification Label

The section of the current standard dealing with the placement of the certification label, S5.6.1(e), states that the label must be placed on the outer surface of the helmet, centered laterally with the horizontal centerline of the symbol, and located a minimum of 1 $\frac{1}{8}$  inches (2.9 cm) and a maximum of 1 $\frac{3}{8}$  inches (3.5 cm) from the bottom edge of the posterior portion of the helmet. NHTSA has found however, based on past investigations, that a substantial

portion of helmets tested failed to comply with the requirements of S5.6.1(e).<sup>26</sup> The agency’s review found that many of the non-compliant helmets have edge rolls,<sup>27</sup> and that the manufacturers of these helmets had placed the DOT symbol above the edge roll at a point that allowed complete label-to-shell contact. Further, the agency found that the helmets met all other labeling requirements.

NHTSA recognizes that, for these helmets, placing the label in the location required by the current standard (on the edge roll rather than on the flat surface above the edge roll) may make the “DOT” symbol non-permanent. In the past, NHTSA’s policy in cases in which the label is placed in a location not permitted by S5.6.1, in order to avoid the edge roll and achieve complete label-to-shell contact, has been merely to tell the manufacturer to correct the problem in future production. However, in this rulemaking, NHTSA is proposing to adjust the standard to allow the placement of the label in a slightly wider range of locations. NHTSA believes that this will continue to require that manufacturers place the label in a location visible to law enforcement personnel, yet ensure that the label is permanently attached to the helmet.

Based upon the intent of the standard and the agency’s analysis, NHTSA is proposing to increase the maximum distance from the edge of the helmet to the horizontal centerline of the label from 1 $\frac{3}{8}$  inches (3.5 cm) to 3 inches (7.6 cm), and lower the minimum distance from 1 $\frac{1}{8}$  inches (2.6 cm) to 1 inch (2.5 cm). In arriving at these values, NHTSA recognized that the intent in specifying the location of the “DOT” symbol in the standard was to ensure visibility of the label to law enforcement personnel, as well as making sure that the symbol is permanent. Therefore, NHTSA undertook an analysis to determine whether or not the maximum and minimum distances could be adjusted to allow additional flexibility with this portion of the standard without detriment to law enforcement efforts.

In order to determine the maximum and minimum distances from the edge of the helmet that a label could be placed and still remain visible, the agency analyzed a “worst case” helmet

<sup>26</sup> NHTSA data indicate that from FY 2000–2003, 14 percent of helmets tested failed to comply with this portion of the standard.

<sup>27</sup> An edge roll is comprised of a strip of material on the lower edge of the helmet with one edge portion attached to the helmet liner on the inner surface of the helmet, and the other edge portion attached to the outer surface of the helmet.

design. This design is a low profile helmet, where the rear area of the helmet has a minimal flat surface area to apply a label. The agency found that at distances above three inches (7.6 cm) from the edge of the worst case helmet, the visibility of the symbol began to be reduced due to the curvature of the helmet. Similarly, the agency found that the “DOT” symbol could be lowered to a minimum of one inch (2.5 cm) from the edge and still be visible to law enforcement personnel, whereas distances below one inch resulted in obscured visibility. Based on these examinations, the agency tentatively determined that allowing a minimum distance of one inch and a maximum of three inches from the bottom edge of the helmet will provide motorcycle helmet manufacturers with the flexibility to place the “DOT” symbol at a location that ensures complete label-to-shell contact on the back of the motorcycle helmet, while keeping the symbol in a location to facilitate law enforcement.

##### 2. Helmet Size Labeling Requirement

NHTSA is also proposing to amend FMVSS No. 218 S5.6.1(c) to read “Discrete size or discrete size range” instead of “Size.” The reason for this is to eliminate enforcement problems that arise when helmets are labeled only with a generic size specification (e.g., Small, Medium, or Large). Enforceability problems can arise because while S6.1 specifies which headform is used to test helmets with a particular “designated discrete size or size range,”<sup>28</sup> a helmet’s generic size may not correspond to the same size ranges that the agency uses to determine which headform to use for testing. To ensure that this issue does not cause problems in the future, the agency is proposing to require the label to specify the “discrete size” of the helmet. The agency is further proposing to define “discrete size” as meaning “a numerical value that corresponds to the diameter of an equivalent (+/– .25 inch or +/- .64 cm) circle.” These minor revisions should result in little to no added cost to the manufacturers since a size label is already required by the standard. Further, these revisions would not preclude manufacturers from continuing also to include generic size labels on their helmets if they wish to do so.

<sup>28</sup> Helmets with a designated discrete size not exceeding 6 $\frac{3}{4}$  (European size: 54) are tested on a small headform, those with a size above 6 $\frac{3}{4}$ , but do not exceed 7 $\frac{1}{2}$  (European size: 60) are tested on a medium headform, and those with a size exceeding 7 $\frac{1}{2}$  are tested on a large headform. See S6.1.1.

#### D. Retention System Quasi-Static Load Application Rate

The FMVSS No. 218 retention system test is designed to help ensure a motorcyclist's helmet stays on his or her head in the event of a crash. The test currently specifies that a static tensile load be applied to the retention assembly of a complete helmet that is mounted on a stationary test headform. The performance requirements associated with the test specify that when the retention assembly is loaded, the retention system must withstand a 300-pound (136.1 kg) test load without separation, and the adjustable portion shall not move more than one inch (2.54 cm).

When the standard was adopted from ANSI Z90.1, only the static load itself was specified, and not the application rate used to reach that static load. The lack of a load application rate has caused some problems regarding the enforcement of FMVSS No. 218. Specifically, a discrepancy was found when testing one manufacturer's motorcycle helmets. While NHTSA found only a 50 percent compliance rate for the helmets, the manufacturer found a 100 percent compliance rate.<sup>29</sup> This discrepancy was caused because the agency and the manufacturer had used substantially different load application rates to achieve the load specified by the standard.

NHTSA believes there are several good reasons for specifying a load application rate for the retention test in S7.3. First, NHTSA believes that specifying the rate would help helmet manufacturers self-certify their helmets with a greater degree of certainty. Second, providing a load application rate would prevent manufacturers from using a significantly different rate from NHTSA's compliance laboratories, and thus attaining different results than those attained by the agency. This, in turn, would help to alleviate problems of enforcement of the standard.

NHTSA is proposing to specify a load application rate of 0.4 to 1.2 in/min (1 to 3 cm/min). This rate has been in the agency's compliance test procedures since 2003. The agency believes that

<sup>29</sup> When NHTSA tested the helmets using the load application rate specified in the compliance laboratory's test procedure (TP-218-04), which specifies a load application rate between 0.4 and 1.2 in/min (1 and 3 cm/min), it found about 50 percent non-compliance results (HS#636466). On the other hand, the manufacturer reported 100 percent compliance for the same helmets. Further examination revealed that the manufacturer's laboratory used a lesser load application rate of the testing equipment. Because no load application rate is currently specified in FMVSS No. 218, there is an ambiguity concerning the proper testing procedure.

this load application rate is reasonable and consistent with what NHTSA and the majority of manufacturers have been using. The formal incorporation of the load application rate into S7.3 should resolve any enforcement ambiguity. Additionally, because the test being performed is no longer a purely static load test, but instead a quasi-static load test, NHTSA is proposing to revise S7.3 accordingly.

#### E. Impact Attenuation Test Upgrades

The impact attenuation test is designed to ensure that a motorcycle helmet is capable of absorbing sufficient energy upon impact with a fixed hard object. Under S5.1, *Impact attenuation*, the peak acceleration of the test headform is required not to exceed 400g, accelerations above 200g not to exceed a cumulative duration of 2.0 milliseconds, and accelerations above 150g not to exceed a cumulative duration of 4.0 milliseconds.

The current impact attenuation test is specified in S7.1, *Impact attenuation test*. In this test, the helmet is first fitted on a test headform. The helmet/headform assembly is then dropped in a guided free fall onto two types of anvils. The first part of the test specifies two "identical" impacts onto a flat steel anvil, and the second part of the test requires two identical impacts onto a hemispherical steel anvil. The performance requirement is that the headform acceleration profile must be less than the specified accelerations given in S5.1.

##### 1. The Impact Sites

###### a. Problems With "Identical Impacts"

One of the proposals of this NPRM is to clarify what is meant by "identical" impacts. The wording of the impact attenuation test was adopted from ANSI Z90.1, including the area on the helmet where the impact test can be conducted. The standard specifies that the impacts must occur at any area above a certain test line (described in S6.2.3),<sup>30</sup> and separated by a defined distance. The agency also adopted the text from ANSI Z90.1 that stated that the two successive impacts must be "identical impacts at each site."<sup>31</sup> One reason that the test described in FMVSS No. 218 is unclear is that while ANSI Z90.1 defined "identical impacts" as impacts centered not more than ¼ inch (0.6 cm) apart, FMVSS No. 218 does not define "identical impacts," nor did the standard incorporate the ANSI Z90.1 definition by reference.

<sup>30</sup> See, ANSI Z90.1, S9.3.1.

<sup>31</sup> *Id.*

Because of the lack of a definition for "identical impacts," there is no clear definition of the term as applied to NHTSA's impact attenuation test. There are two reasonable interpretations of this term. The first is that "identical impacts" means two successive impacts on the exact same spot of the test helmet, or separated by not more than a reasonable tolerance (such as the ANSI Z90.1 tolerance of ¼ inch). The second is that "identical impacts" has a broader meaning, implying the exact same test conditions (i.e., velocity, location, and conditioning of the helmet) for the successive impacts, regardless of whether the helmet/headform assembly actually impacted the fixed anvil at or near the same location on the helmet on the subsequent drop.

###### b. NHTSA Proposal

In order to remove this ambiguity, as well as to provide a clear method of enforcement, NHTSA is proposing to delete the term "identical impacts" from the standard and instead specify the location of the impacts on the helmet. NHTSA believes that the best approach is to specify that successive impacts on the same helmet should be in the same location on the helmet within a reasonable tolerance. This approach adopts the same basic approach as the ANSI Z90.1 meaning of "identical impacts," and clears up any ambiguity about the use of the term "identical." With regard to the allowable tolerance, we have tentatively concluded that the best approach is to specify that a reasonable tolerance would be no less than 1.9 cm (¾ inch). The rationale for choosing this tolerance is described below.

###### c. Rationale for a 1.9 cm (¾ inch) Tolerance

NHTSA tentatively believes that given the requirements of FMVSS No. 218, a greater tolerance for variation in impact locations is necessary than that provided by the ANSI Z90.1 standard. Specifically, because of the large variety of helmet sizes that must fit onto the three headforms specified in FMVSS No. 218, the 1.9 cm (¾ inch) tolerance is necessary to ensure that the majority of helmets can meet the requirements of the standard.

To establish a reasonable tolerance for the impact attenuation test drops, NHTSA evaluated compliance testing that had been conducted under FMVSS No. 218 by the Office of Vehicle Safety Compliance (OVSC). NHTSA compared the distances between successive impacts with the 0.6 cm (¼ inch) tolerance specified in ANSI Z90.1 and the 1.0 cm (⅜ inch) tolerance specified

by the Snell Memorial Foundation (Snell) under its own helmet testing guidelines.<sup>32</sup> In its analysis, NHTSA found that only a small number of successive impact tests were able to meet the ¼ inch tolerance and only slightly more were able to meet the ⅔ inch tolerance set forth by these standards bodies. On the other hand, using a tolerance of ¾ inch, NHTSA found that only 5–10 percent of compliance test impacts would fall outside this tolerance.<sup>33</sup>

The reason for allowing a greater tolerance for variation in impact location in the FMVSS No. 218 test (as opposed to the tolerances permitted by ANSI Z90.1 or the Snell guidelines) is because of the limited number of different size headforms available for compliance testing and the design of certain helmets. FMVSS No. 218 specifies three acceptable headforms for use in compliance testing (small size A, medium size C, large size D). However, because of the large variety of helmet sizes available on the market that must be tested using these headforms, some helmets (especially very large helmets) do not fit as “snugly” on the specified headform as others. While every effort is made to secure the helmet on the specified headform, there are times when there is enough movement of the helmet on the headform to result in two successive impacts’ being up to ¾ inch apart. This is most commonly seen in helmets whose size is at the upper limits of a particular headform. In addition, the design of some helmets, namely partial helmet designs, tends not to be designed to fit a headform as closely as full helmets, and therefore also have a tendency to shift during testing.

Conversely, the ANSI Z90.1 standard and the Snell guidelines do not suffer from the same variations in testing as those of FMVSS No. 218. While ANSI specifies only one headform, it stipulates that it does not allow for proper testing of all protective headgear, a function that FMVSS No. 218 must perform. On the other hand, the Snell guidelines specify five different headforms that can be combined with the helmet to create the helmet/headform assembly, making it much more likely that a more appropriately-sized headform will be available to prevent the helmet from moving as much.<sup>34</sup> Therefore, because of the

differences between the ANSI and Snell guidelines, and the conditions of FMVSS No. 218, there are ample reasons to choose a slightly greater tolerance for variation in the Federal standard.

## 2. Impact Attenuation Test Speed

In addition to revising the location of the impacts, NHTSA also believes there is a need to update the impact velocity for the attenuation test. This is because NHTSA believes the current regulation could be interpreted to mean that a helmet could be certified to any speed above the minimum impact velocity specified in FMVSS No. 218. In the agency’s view, this is inconsistent with the intent of the standard, which is to mandate testing of the helmets at velocities approximating those listed in FMVSS No. 218. Thus, NHTSA is proposing to replace the minimum impact velocity with a range of acceptable velocities. Further, because the regulation specifies both an impact velocity and a drop height, there is both a redundancy and the possibility of additional ambiguity in the standard.<sup>35</sup> Therefore, the agency is also proposing to eliminate the drop height requirements.

### a. Current Impact Attenuation Test Procedures

Currently, the helmet/headform assembly is tested by dropping it onto both a hemispherical and flat anvil, and then measuring the acceleration imparted to the headform at the time of impact. Section S7.1.4(a) specifies that the helmet/headform assembly must impact the hemispherical anvil with a minimum speed of 17.1 ft/s (5.2 m/s), while S7.1.4(b) specifies that the assembly must impact the flat anvil with a minimum speed of 19.7 ft/s (6.0 m/s). Additionally, both S7.1.4(a) and (b) specify minimum drop heights from which the assembly is dropped onto the respective anvils.

It has been NHTSA’s practice, when conducting compliance testing, to test helmets at a speed slightly below the minimum speeds specified in S7.1.4. A lower impact speed generally favors the manufacturer, as the impact forces imparted to the helmet are slightly lower. This has been done to ensure that, given the speed variations inherent in testing, NHTSA does not find a helmet not compliant due to inadvertently testing it at a higher velocity than the minimum specified in

the standard. However, there have been problems with this approach. When testing the helmet of one manufacturer, NexL, NHTSA found that the helmet did not pass the impact attenuation test at speeds below the minimum specified impact velocity. NexL claimed that because the type of foam they use in their helmet liner, high-density polyethylene cross-linked foam, is designed to crush only during high-speed impacts, the helmet would have passed the test at speeds at or above the minimum speeds specified in the test procedure. NexL also claimed that the test procedure used by NHTSA violated the standard as written, and that helmets could only be tested at the minimum impact speed specified or higher.

### b. Concerns Regarding Current Test Procedures

NHTSA believes that FMVSS No. 218, as written, could be interpreted to suggest that manufacturers are required to certify, and NHTSA can test, that the helmet complies with the impact attenuation requirements when tested at any velocity above the minimums set forth in the standard. This interpretation would permit the agency to test virtually any helmet to failure by testing at velocities considerably higher than the specified minimums.

The intent of the impact attenuation test in FMVSS No. 218 is to ensure that helmets retain structural integrity and attenuate impact energy during a variety of crash scenarios. The two scenarios tested by the requirements in S7.1.4 are represented by testing helmets at velocities near 19.7 ft/s (6.0 m/s) for the flat anvil test configuration and 17.1 ft/s (5.2 m/s) for the hemispherical anvil test configuration. These scenarios would not be represented by a test where the velocity at impact was considerably higher, or lower, than specified by the standard.

In addition, the impact attenuation standard was adopted from ANSI Z90.1, and NHTSA did not intend for its test to be markedly different from the ANSI test. The ANSI standard specifies a specific height from which the assembly should be dropped. The agency translated this height requirement into the aforementioned impact velocities. Since the intent of the standard was to adopt a similar test to that of ANSI Z90.1, and since ANSI Z90.1 specified drop heights that would result in a specified velocity in a guided free fall drop, it is the intent of the agency’s standard to perform the impact attenuation close to the converted ANSI speeds for the respective tests, and not

<sup>32</sup> The Snell Memorial Foundation is a private, non-profit organization that sets voluntary standards for motorcycle helmets.

<sup>33</sup> See Appendix A, Table 4: “Distance between Successive Impacts.”

<sup>34</sup> See [http://www.smf.org/standards/2005/m2005/m2005\\_final.html](http://www.smf.org/standards/2005/m2005/m2005_final.html).

<sup>35</sup> Velocity is related to drop height according to the relationship  $V=\sqrt{2gh}$ , where V is the velocity, h is the drop height, and g is the gravitational force. Thus, specifying the velocity implicitly defines a drop height.

at undefined impact speeds above these respective values.

In order to bring the language of FMVSS No. 218 into conformity with the intent of the standard, NHTSA proposes to replace the minimum impact velocity requirements with a range of acceptable values. These values would specify both minimum and maximum impact velocities. Using this system would provide more certain test procedures, as well as alleviate enforcement problems that have arisen in the past. NHTSA proposes to set the tolerance for the impact attenuation velocity at  $\pm 1.2$  ft/s (.4 m/s) from the nominal values of either 19.7 ft/s (6.0 m/s) or 17.1 ft/s (5.2 m/s) depending on the anvil test. The rationale for this tolerance range is set forth below.

#### c. Rationale for Impact Attenuation Speed Tolerance Level

In its compliance testing, NHTSA has consistently tested slightly below the velocities specified in S7.1.4. The tolerances are set forth in the test procedure (TP-218-06) used to conduct compliance testing, and are established as  $-1.6$  ft/s (0.5 m/s) and  $+0$  for the flat anvil test, and  $-1.4$  ft/s (0.4 m/s) and  $+0$  for the hemispherical anvil. This velocity tolerance translates to test velocities ranging between 18.1–19.7 ft/s (4.8–5.2 m/s) for the flat anvil test and 15.7–17.1 ft/s (4.8–5.2 m/s) for the hemispherical one.<sup>36</sup> However, NHTSA has found that with this range of tolerances, a number of tests fell outside the range of velocities specified in the test procedure. Therefore, the agency believes that a larger velocity tolerance must be allowed in order to account for the uncertainties in the test procedure.

In order to arrive at the narrowest tolerance practicable, NHTSA took into account several factors that contribute to variability in the test results. These factors are inherent to the current procedure used for FMVSS No. 218 compliance testing, using the industry standard flag and light emitting diode (LED) technology, which measures how fast a flag travels through an LED apparatus. First is the inherent variability found when calibrating the equipment for the impact velocity measurement; second is the variation in velocity due to test system uncertainty (i.e., friction effects, bearing effects, etc.); and the third is variation due to test setup (i.e., helmet factors, impact locations, and helmet condition). The  $\pm 1.2$  ft/s (.4 m/s) tolerance proposed

by NHTSA takes into account the total amount of variation produced by these factors.

The error attributed to the calibration of the impact equipment is comprised of rotational speed and distance measurement error. Calibration is performed using a wheel, which spins at a known rate per minute (rpm) and a known distance from the central axis for the flag that trips the velocity trap. Thus, rotational speed depends on how accurately the rpm can be controlled and measured, and the distance depends on the accuracy with which the distance from the central axis to the flag can be measured using a Vernier Caliper. NHTSA has found that the error associated with the calibration of the equipment is approximately  $\pm 0.64$  ft/s (0.19 m/s). Investigations into other labs involved in impact attenuation testing found that alternative calibration methods had similar margins of error.

The remaining error,  $\pm 0.56$  ft/s (0.17 m/s), is attributable to a combination of the uncertainty associated with the test system and test setup. The variability associated with the test setup stems from friction resulting from use of the monorail and bearing system (which facilitates guided free fall) used in the test equipment. The variability associated with the test setup can be attributed to variations in how the helmet is placed on the assembly, as well as small variations in the condition of the helmet, headform, and test equipment. While there was no way to separate the variation resulting from the test equipment and that resulting from the test setup, NHTSA was able to undertake a statistical analysis in order to arrive at the figure of  $\pm 0.56$  ft/s as the total variability arising from these factors.

NHTSA determined the degree of variation by examining data from 496 compliance test drops (using both the flat anvil and hemispherical anvil test),<sup>37</sup> and calculating the variations in velocity among those drops. The combined test equipment/test setup error is quantified by determining the velocity range for the 512 test drops. Prior to performing the statistical analysis, the agency set a benchmark that a reasonable velocity range would be one that allows for 95 percent of the 512 test drops to fall within the specified tolerance. The results of the study then indicated that 95 percent of all the test drops achieved an impact velocity within 0.56 ft/s of the mean

velocity of all 512 drops. Therefore, it was determined that the variations in setup, friction, positioning, and all other non-calibration errors amounted to 0.56 ft/s of variation.<sup>38</sup>

Adding the calibration error of  $\pm 0.64$  ft/s (0.19 m/s) and the test equipment/test setup error of  $\pm 0.56$  ft/s (0.17 m/s) results in a total of  $\pm 1.20$  ft/s (0.36 m/s). Given the measurement ability of the instrument and to avoid creating additional enforceability issues, the agency proposes rounding the tolerance to one significant digit, resulting in a tolerance of  $\pm 1.2$  ft/s (0.4 m/s) for the impact attenuation tests of FMVSS No. 218.

Finally, NHTSA is providing the impact velocity and the associated tolerances as a velocity range, rather than as a target with a  $\pm$  value. This format provides the agency with the legal ability to perform the impact attenuation test at any velocity between and including the upper and lower bounds of the velocity range. In addition, it is proposed to delete the drop height requirements, since they have no influence on the effectiveness of the test and only introduce ambiguity.

#### d. Alternative Test Methods Examined

To determine if the tolerance could be reduced further, NHTSA investigated alternative velocity measurement technology. First, the agency investigated other velocity measuring technologies that could potentially be used to reduce the tolerance, such as laser recorded velocity, break wire technology (which determines velocity by measuring the time required for a dropped helmet to break through two wires that are a known distance apart), and high speed video analysis. However, these technologies were found to be either technically undesirable or cost prohibitive. Laser recording was technically undesirable because this technology requires placing a hole in the center of the impact anvil, which would change the anvil surface and create variability in the impact measurement. Break wire technology, on the other hand, frequently results in deflection of the wire before breakage, which can result in even more variability in the test results. Finally, video analysis was found to be cost-prohibitive, as it significantly increased the cost of performing an FMVSS No. 218 test.

<sup>36</sup> In using these ranges, NHTSA's labs aim for a flat anvil nominal velocity of 5.8 m/s and a hemispherical anvil velocity of 5.0 m/s. This creates functional tolerances of  $\pm .8$  ft/s for the flat anvil test, and  $\pm .7$  ft/s for the hemispherical anvil test.

<sup>37</sup> The tests were analyzed using the Statistical Package for Social Sciences (SPSS) computer program. See <http://www.spss.com> for more information.

<sup>38</sup> See Appendix A Tables 5–8, Figures 1 & 2 and corresponding discussion, which is available in the docket.

#### F. Tolerances for Helmet Conditioning Specifications

In keeping with the theme of providing more clearly defined, enforceable testing procedures for FMVSS No. 218, NHTSA is proposing to provide temperature tolerances and clearer time measurements for the helmet conditioning procedures in the standard. Currently, §6.4.1 describes four conditions to which a helmet must be exposed for a 12-hour period of time before being subjected to the testing sequences described in S7 of the regulation. The regulation specifies temperatures, relative humidity, and the time period to which the helmet must be exposed. However, the current absence of tolerances on these specified conditions can result in unrealistic conditioning requirements for both NHTSA and helmet manufacturers' certification testing. In addition, enforcement problems could arise following an otherwise proper test if an inexact temperature or humidity condition were inadvertently used.

NHTSA is proposing to add reasonable tolerances for temperature and relative humidity conditioning, as well as to specify twelve hours as a minimum time to condition the helmet prior to testing. This will enable NHTSA to undertake legally enforceable testing of helmets at the conditions specified within the tolerances. Specifically, NHTSA is proposing to set the tolerances for temperature at  $\pm 5$  °C (9°F) and the tolerance for relative humidity fluctuation of  $\pm 20$  percent. In addition, NHTSA is proposing to clarify the twelve hour period for the time specified in §6.4.1 as a minimum time requirement. As discussed in relation to the velocity tolerances discussed above, NHTSA is proposing to provide a range for temperature and humidity, rather than a  $\pm$  value, because it provides the agency with a legally enforceable ability to condition the helmet at any temperature between and including the two temperatures specified.

NHTSA believes that the tolerance ranges it is proposing are reasonable and practicable. A review of eight compliance test reports from fiscal year 2006 showed a maximum temperature range of  $\pm 5$  °C (9 °F) and relative humidity fluctuation between 36 and 66 percent. The agency considered the FMVSS No. 218 historical data, other agency regulations that provide tolerances, as well as industry standards such as the ANSI conditioning requirements and the ECE<sup>39</sup>

regulations.<sup>40</sup> In addition, we considered the available test equipment for temperature conditioning, and received input from the FMVSS No. 218 test labs as to what are achievable tolerances. NHTSA believes that the recommended tolerances will not have any effect on the performance of the helmet or result in any adverse safety or cost impact.

#### G. Correction of Figures 7 and 8

NHTSA has discovered that Figures 7 and 8 in FMVSS No. 218 were inadvertently switched at some unknown time in the past. To correct this error, NHTSA is proposing to keep the titles the same for each Figure, and to switch the diagrams so the diagrams for the medium and large headforms properly correspond to the figure titles.

#### H. Update SAE Reference to J211

FMVSS No. 218 S7.1.9 currently specifies that "the acceleration data channel complies with SAE Recommended Practice J211 JUN 80, Instrumentation for Impact Tests, requirements for channel class 1,000." SAE Recommended Practice J211 has been revised several times since June of 1980 and the agency proposed to update the cited practice to SAE Recommended Practice J211, Revised March 1995, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation." This version is consistent with the current requirements for the regulation's filter needs, and it is also consistent with other recently updated standards and regulations.

#### III. Effective Date

NHTSA is proposing a lead time of two years from the publication of the final rule for manufacturers to comply with the revisions. The proposed changes to the standard are maintenance revisions, and manufacturers should not have to purchase new test equipment or make any structural changes to their helmets to ensure compliance with the revised tests or updated SAE recommended practice J211. The only changes manufacturers will have to make are changes to their current "DOT" label to comply with the proposed labeling revisions, although this should not require the purchase of new equipment either. Therefore, the agency believes that a lead time of two years to be sufficient time to comply with the updated regulations.

provisions concerning the approval of protective helmets and of their visors for drivers and passengers of motorcycles and mopeds.

<sup>40</sup> See ANSI Z90.1 and ECE Conditioning Requirements, in the docket.

#### IV. Benefits/Costs

To calculate the benefits and costs of this proposed rulemaking, the agency has prepared a Preliminary Regulatory Evaluation (PRE). The results of the PRE indicate that the proposed rule would be cost-effective. Part of the goal of this rule is to decrease the on-road use of "novelty" helmets, and have those riders use FMVSS No. 218-certified helmets (certified helmets) instead. Depending on the degree of effectiveness that the rule has, the costs and benefits can vary substantially. The benefits and costs of the proposal depend on how many motorcycle riders will change from using non-compliant helmets (novelty helmets) to certified helmets. Behavior change among motorcycle riders as a result of the proposal is difficult to predict. However, the agency believes that 5 to 10 percent of the novelty helmet users in states that have a Universal Helmet Law (Law States) would make a switch,<sup>41</sup> and that this is a modest and achievable projection. Therefore, the analysis estimates benefits and costs of the proposal for the 5 and 10 percent projections (i.e., the 5- and 10-percent scenarios). In addition, the analysis also estimates the maximum potential benefit of the proposal which corresponds to the scenario that all novelty helmet users in Law States would become certified helmet users (the 100-percent scenario). Cost-effectiveness and net benefits of the proposal were also estimated based on these three scenarios.

This rulemaking imposes two sources of potential costs. The costs include: (a) The incremental cost to manufacturers for implementing the recommended labeling requirements and (b) the incremental cost to novelty helmet users in Law States who would eventually switch to use a certified helmet. The increased labeling costs, borne by manufacturers, are estimated to be two cents per helmet. For a total estimate of 5.2 million certified helmets manufactured per year, the cost translates to \$0.1 million.

The incremental cost per replaced novelty helmet, borne by users who switch from novelty helmets to certified helmets, is estimated to be \$45.00. Annually, an estimated 31,961, 63,922, and 639,220 novelty helmets sold in Law States would be replaced by 218-compliant helmets respectively for the 5-, 10-, and 100-percent scenarios. The corresponding total cost to switched novelty helmet users would be \$1.4,

<sup>41</sup> This estimate is based upon effectiveness of similar rules. Comments on this estimate are sought.

<sup>39</sup> The United Nations Economic Commission for Europe (ECE) is the United Nations uniform

\$2.9, and \$28.8 million, respectively. Therefore, the net cost of the proposal would be:

- \$1.5 million for the 5-percent scenario (= \$0.1 + \$1.4 million)
- \$3.0 million for the 10-percent scenario (= \$0.1 + \$2.9 million)
- \$28.9 million for the 100-percent scenario (= \$0.1 + \$28.8 million).

The benefits of the proposal depend upon how many motorcycle riders in Law States will change from using non-compliant helmets (novelty helmets) to certified helmets. These actions would result in a safety benefit in providing proper head protection to motorcycle riders, as compliance tests of “novelty” helmets showed that they failed to meet all of the FMVSS No. 218 performance requirements. On the other hand, certified helmets are extremely effective at saving lives. One NCSA report concludes that the effectiveness of these helmets has improved from 29 percent in 1989 to the present rate of 37 percent.<sup>42</sup> The report calculates that this higher effectiveness of motorcycle helmets has saved 7,808 lives from 1993 through 2002; that is, 2,378 more saved lives than was previously calculated.<sup>43</sup> In 2006 alone, NHTSA estimates that helmets saved 1,658 lives.

If five percent of the novelty helmet users in Law States make a switch (*i.e.*, the 5-percent scenario), the proposal would save 17–32 lives annually. Under the 10-percent scenario, the proposal would save 35–65 lives annually. The proposal would potentially save a maximum of 346–649 lives if all Law State novelty helmet users switched to certified helmets. Due to the relatively small sample of non-fatal head injuries to fatal head injuries, the impact of the proposal on non-fatal head injuries would be negligible. In terms of cost effectiveness, the proposal is highly cost-effective. This proposal is expected to save 17–649 lives annually at a cost of \$0.05 to \$0.10 million per equivalent life saved at a three percent discount rate, and \$0.06 to \$0.12 million at a seven percent discount rate.

## V. Public Participation

*How do I prepare and submit comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at <http://dms.dot.gov>.

*How can I be sure that my comments were received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How do I submit confidential business information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

*Will the agency consider late comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

*How can I read the comments submitted by other people?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

## VI. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action would amend Federal Motor Vehicle Safety Standard No. 218 to improve enforceability and help reduce the use of novelty helmets. It was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not “significant” under them.

NHTSA has prepared a preliminary regulatory evaluation for this action that discusses its potential costs, benefits and other impacts. A copy of the evaluation has been placed in the docket for this rulemaking action. The evaluation suggests several issues that could result in potential costs to consumers or industry. First, this action proposes labeling requirements that will cause helmet manufacturers minimal costs and will not interfere with existing designs. The agency estimates that the cost of the labeling requirement would not exceed \$0.02 per helmet. Second,

<sup>42</sup> DOT HS 809 715, March 2004.

<sup>43</sup> National Highway Traffic Safety Administration. (2005). *Traffic safety facts 2004: Motorcycles (DOT HS 809 908)*. Washington, DC: National Center for Statistics & Analyses, National Highway Traffic Safety Administration.

this action proposes adding tolerances to the compliance tests of FMVSS No. 218 that would make it easier to undertake enforcement actions, but the agency does not believe that it would require significant expenses or changes in helmet manufacture or testing procedures. Third, and finally, the agency believes that this proposed rule would cause a substantial number of people who currently own or plan to purchase novelty helmets to purchase FMVSS No. 218-compliant helmets instead. As compliant helmets are frequently more expensive than novelty helmets, this could result in a cost to those consumers who make the switch of approximately \$45 per helmet. Further information about the benefits and costs of this rulemaking action may be found above in Section IV of this preamble.

#### B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. This rule imposes minimal cost burdens on helmet manufacturers, on the order of 1–2 cents per helmet. While it is possible that the costs of designing an improved label are fixed at about \$1,000 (and therefore may cost more on a per-helmet basis for small manufacturers), the costs are still minimal compared to the overall cost of a compliant motorcycle helmet. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### C. Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does 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."

Further, no consultation is needed to discuss the preemptive effect of today's proposed rule. NHTSA rules can have preemptive effect in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1).

In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's proposed rule. NHTSA may opine on such conflicts in the future, if warranted. See *id.* at 883–86.

#### D. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation,

including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

#### E. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

FMVSS No. 218 is largely based on American National Standards Institute (ANSI) Z90.1–1971, "Specifications for Protective Headgear for Vehicular Users," and incorporates the Society of Automotive Engineers (SAE) Recommended Practice J211 MAR 95, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," both of which are voluntary consensus standards. We do not know of any other voluntary consensus standards addressing this matter.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by

State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

#### *G. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

#### *H. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information

by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain any new reporting requirements or requests for information.

#### *I. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?

- Could we improve clarity by adding tables, lists, or diagrams?

- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

#### *J. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### **Appendix to Preamble**

**BILLING CODE 4910-59-P**

Figure A1 – Current labeling requirement (not to scale)

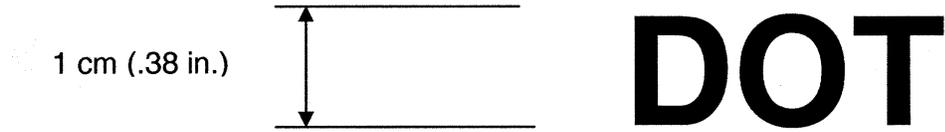
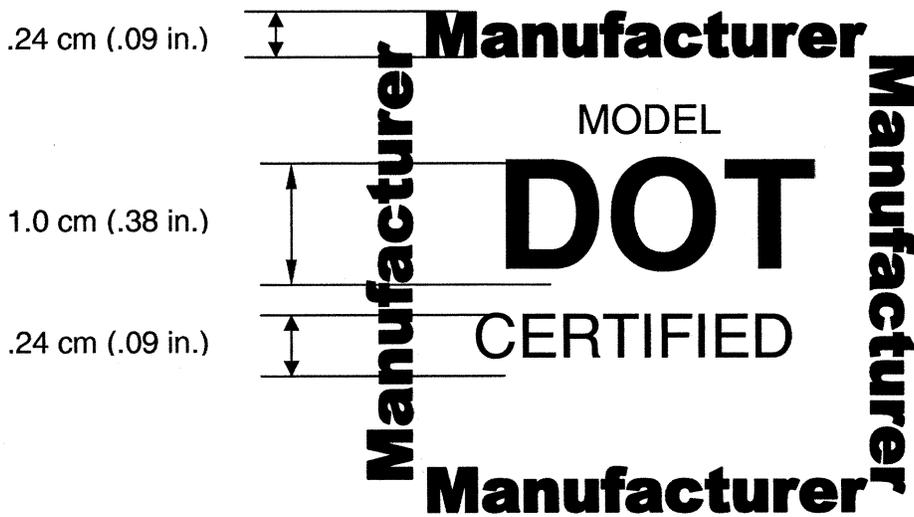
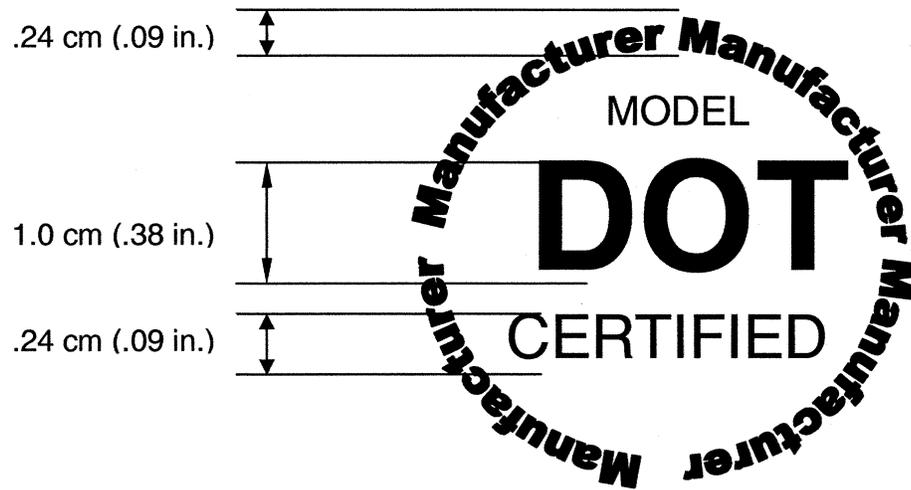
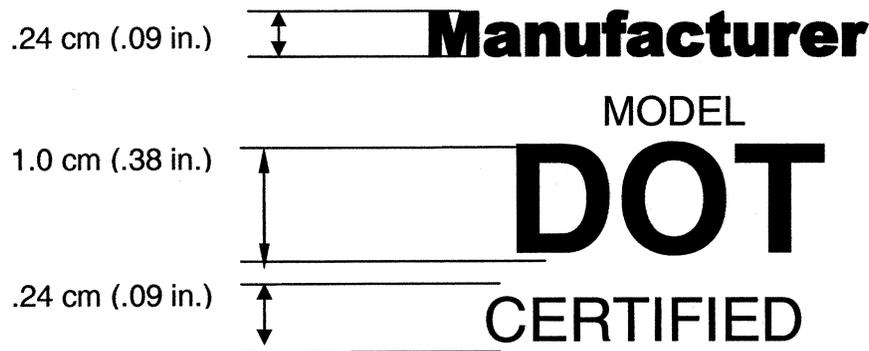
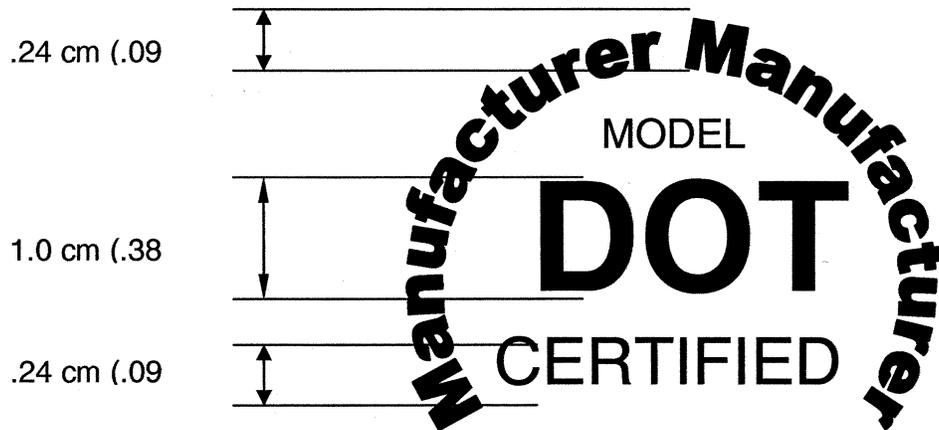


Figure A2 – Illustrations that would comply with proposed labeling requirement (not to scale)





BILLING CODE 4910-59-C

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we propose to amend 49 CFR part 571 to read as follows:

**PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

1. The authority citation for part 571 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 20111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.218 is amended by adding paragraph S5.6.2, and three definitions in alphabetical order in paragraph S4, as well as revising paragraphs S5.6.1, S6.4.1, S7.1.2, S7.1.4, S7.1.9, S7.3.1, and S7.3.2, to read as follows:

**§ 571.218 Standard No. 218; Motorcycle Helmets.**

\* \* \* \* \*  
S4 \* \* \*

*Clear coating* means the clear (non-pigmented), permanent coating applied by the manufacturer as the uppermost layer of coating covering the entire outer surface of a helmet's shell.

*Discrete size* means a numerical value that corresponds to the diameter of an equivalent (+/- .25 inch or +/- .64 cm) circle.

\* \* \* \* \*

*Impact site* means the location where the helmet contacts the center of the anvil.

\* \* \* \* \*

S5.6.1 Each helmet shall be labeled permanently and legibly, in a manner such that the label(s) can be read easily without removing padding or any other permanent part, with the following:

- (a) Manufacturer's name.
- (b) Discrete size.
- (c) Month and year of manufacture. This may be spelled out (for example, June 1988), or expressed in numerals (for example, 6/88).
- (d) Instructions to the purchaser as follows:
  - (1) "Shell and liner constructed of" (identify type(s) of materials).

(2) "Helmet can be seriously damaged by some common substances without damage being visible to the user. Apply only the following:" (Recommended cleaning agents, paints, adhesives, etc., as appropriate).

(3) "Make no modifications. Fasten helmet securely. If helmet experiences a severe blow, return it to the manufacturer for inspection, or destroy it and replace it."

(4) Any additional relevant safety information should be applied at the time of purchase by means of an attached tag, brochure, or other suitable means.

S5.6.2 Certification. Each helmet shall be labeled permanently and legibly with a label, constituting the manufacturer's certification the helmet conforms to the applicable Federal motor vehicle safety standards, that is separate from the label(s) used to comply with S5.6.1, and complies with paragraphs (a) through (d) of this section.

(a) Content, format, and appearance. The label shall have the following content, format, and appearance:

(1) The symbol "DOT", horizontally centered on the label, in letters at least .38 inch (1.0 cm) high.

(2) The word "CERTIFIED," horizontally centered beneath the symbol DOT, in letters at least .09 inches (.23 cm) high.

(3) The manufacturer's name and/or brand, horizontally centered above the symbol DOT, in letters and/or numerals at least .09 inch (.23 cm) high.

(4) The precise model designation, horizontally centered above the symbol DOT, in letters and/or numerals at least .09 inch (.23 cm) high.

(5) All symbols, letters and numerals shall be in a color that contrasts with the background of the label.

(b) Other information. No information, other than the information specified in subparagraph (a), shall appear on the label.

(c) Location. The label shall appear on the outer surface of the helmet and be placed so that it is centered laterally with the horizontal centerline of the DOT symbol located a minimum of 1 inch (2.5 cm) and a maximum of 3 inches (7.6 cm) from the bottom edge of the posterior portion of the helmet.

(d) Clear coating. Clear coating shall cover the label, including all of the required content, and the outer surface of the helmet.

\* \* \* \* \*

S6.4.1 Immediately before conducting the testing sequence specified in S7, condition each test helmet in accordance with any one of the following procedures:

(a) *Ambient conditions.* Expose to any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) and any relative humidity from 30 to and including 70 percent for a minimum of 12 hours.

(b) *Low temperature.* Expose to any temperature from 5 °F to and including 23 °F (from -15 °C to and including -5 °C) for a minimum of 12 hours.

(c) *High temperature.* Expose to any temperature from 113 °F to and including 131 °F (from 45 °C to and including 55 °C) for a minimum of 12 hours.

(d) *Water immersion.* Immerse in water at any temperature from 61 °F to and including 79 °F (from 16 °C to and including 26 °C) for a minimum of 12 hours.

\* \* \* \* \*

S7.1.2 Each helmet is impacted at four sites with two successive impacts at each site. For each site, the location where the helmet contacts the center of the anvil on the second impact shall not be greater than .075 inch (1.9 cm) from the location where the helmet contacts

the center of the anvil on the first impact. Two of these sites are impacted upon a flat steel anvil and two upon a hemispherical steel anvil as specified in S7.1.10 and S7.1.11. The impact sites are at any point on the area above the test line described in paragraph S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area.

\* \* \* \* \*

S7.1.4(a) The guided free fall drop height for the helmet and test headform combination onto the hemispherical anvil shall be such that the impact speed is any speed from 15.7 ft/s to and including 18.4 ft/s (from 4.8 m/s to and including 5.6 m/s).

(b) The guided free fall drop height for the helmet and test headform combination onto the flat anvil shall be such that the impact speed is any speed from 18.4 ft/s to and including 21.0 ft/s (from 5.6 m/s to and including 6.4 m/s).

\* \* \* \* \*

S7.1.9 The acceleration transducer is mounted at the center of gravity of the test headform with the sensitive axis aligned to within 5° of vertical when the test headform assembly is in the data impact position. The acceleration data channel complies with the SAE recommended practice J211 MAR 95, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation."

\* \* \* \* \*

S7.3.1 The retention system test is conducted by applying a quasi-static tensile load at any rate from 0.4 to and including 1.2 inch/min (from 1.0 to and including 3.0 cm/min) to the retention assembly of a complete helmet, which is mounted, as described in S6.3, on a stationary test headform as shown in Figure 4, and by measuring the movement of the adjustable portion of the retention system test device under tension.

S7.3.2 The retention system test device consists of both an adjustable loading mechanism by which a quasi-static tensile load is applied at any rate from 0.4 to and including 1.2 inch/min (from 1.0 to and including 3.0 cm/min) to the helmet retention assembly and a means for holding the test headform and helmet stationary. The retention assembly is fastened around two freely moving rollers, both of which have a 0.5 inch (1.3 cm) diameter and a 3-inch (7.6 cm) center-to-center separation, and which are mounted on the adjustable portion of the tensile loading device (Figure 4). The helmet is fixed on the test headform as necessary to ensure that it does not move during the

application of the test loads to retention assembly.

\* \* \* \* \*

Issued: September 26, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8-23187 Filed 9-29-08; 11:15 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0095; 92220-1113-0000-C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the California, Oregon, and Washington Population of the Marbled Murrelet (*Brachyramphus marmoratus*) From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the California, Oregon, and Washington population of the marbled murrelet (*Brachyramphus marmoratus*) from the Federal List of Endangered and Threatened Wildlife (List) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that the petitioned action may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the marbled murrelet, which will also serve as our 5-year status review for the species. Concurrent with making our 12-month finding on the petition and conducting a 5-year status review, we intend to review the rangewide status of the species, and if necessary, the configuration and status of any distinct population segments. To ensure a comprehensive review, we are soliciting scientific and commercial data and other information on the marbled murrelet relevant to its listing status under the Act. At the conclusion of our status review, we will issue a 12-month finding on the petition.

DATES: We made the finding announced in this document on October 2, 2008. To allow us adequate time to conduct this review, we request that we receive information on or before December 1, 2008.

**ADDRESSES:** You may submit information by one of the following methods:

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

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R1-ES-2008-0095, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received at <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager, Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503; telephone 360-753-6039; facsimile at 360-753-9405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Information Solicited**

When we make a finding that a petition presents substantial information to indicate that listing, delisting, or reclassifying a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the marbled murrelet. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, agricultural and forestry groups, conservation groups, industry, or any other interested parties concerning the status of the marbled murrelet, including but not limited to information on:

(1) Discreteness and significance of the marbled murrelet in California, Oregon, and Washington in light of our distinct population segment (DPS) policy (61 FR 4722; February 7, 1996).

(2) Discreteness, significance, and status of other portions of the marbled murrelet's range.

(3) Differences or similarities in regulatory protection for marbled murrelets in the United States and Canada.

(4) The status, distribution, or population trends of the marbled murrelet throughout all or significant portions of its range.

(5) Ongoing conservation measures for the species and its habitat.

(6) Threats to the marbled murrelet and its habitat throughout all or a significant portion of its range.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that a determination as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act. We will base our 12-month finding on a review of the best scientific and commercial data available, including all relevant information received in response to this 90-day finding. Concurrent with our 12-month finding, we may also propose changes to the status of the marbled murrelet rangewide, within DPSs, or within significant portions of its range.

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax, or to an address not listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including your personal identifying information—will be posted on the Web site. If your submission is made via hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on

information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making a 90-day finding under section 4(b)(3)(A) of the Act and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 424.14(b) is limited to a determination of whether the information in a petition meets the "substantial scientific or commercial information" threshold. Our regulations provide a standard for determining what constitutes substantial information with regard to a 90-day petition finding: "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). In making this finding, we consider whether the petition: (1) Clearly indicates the administrative action recommended; (2) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). If we find that the petition presents substantial scientific or commercial information, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

**Petition**

On May 28, 2008, we received a petition from the American Forest Resource Council; the Carpenters Industrial Council of Douglas County, Oregon; and Ron Stuntzner requesting

that we delist the California/Oregon/Washington distinct population segment (DPS) of marbled murrelet (*Brachyramphus marmoratus*). The petition clearly identified itself as a petition and included the identification information for the petitioners, as required in 50 CFR 424.14(a). The petitioners claim that the currently listed entity (the marbled murrelet in California, Oregon, and Washington) is not a discrete entity based on biological considerations or differences in regulatory mechanisms across an international boundary, and therefore is not listable as a DPS under the Act. In support of their petition they cite the Service's 5-year review of the marbled murrelet (USFWS 2004; available at: <http://www.fws.gov/pacific/ecoservices/endangered/recovery/5yearcomplete.html>), which found that the currently listed population of the marbled murrelet was not discrete. The petitioners also cite information contained in a U.S. Geological Survey (USGS) report commissioned by the Service on the status and trends of the marbled murrelet in Alaska and British Columbia (Piatt *et al.* 2007). The USGS report also included information on the marbled murrelet in California, Oregon, and Washington.

In response to the May 28, 2008, petition, we sent a letter to the petitioners dated June 11, 2008, acknowledging receipt of the petition. This notice constitutes our 90-day finding on the May 28, 2008, petition to delist the California/Oregon/Washington DPS of the marbled murrelet.

### Species Information

The marbled murrelet is a small seabird of the Alcidae family. The species' breeding range extends from Bristol Bay, Alaska, south to northern Monterey Bay in central California. Birds winter throughout the breeding range (McShane *et al.* 2004, pp. 3–7) and also occur in small numbers off the coast of southern California (McShane *et al.* 2004, pp. 3–12).

Marbled murrelets spend most of their lives in the marine environment; however, they have been found occasionally on rivers and inland lakes (Carter and Sealy 1986, p. 473). In addition to foraging, marbled murrelets also aggregate, sleep, preen, and copulate on the water.

Throughout the forested portion of their breeding range, marbled murrelet nesting habitat use is positively associated with the presence and abundance of mature and old-growth forests, large core areas of old-growth, low amounts of edge and fragmentation,

proximity to the marine environment, and increasing forest age and height (McShane *et al.* 2004, pp. 4–39; Binford *et al.* 1975, pp. 315–316; Hamer and Nelson 1995, pp. 72–75; Ralph *et al.* 1995, p. 4). In the northern portion of their breeding range (Alaska, British Columbia, and Washington) some marbled murrelets lay their eggs on bare talus slopes or mossy cliff edges (Piatt *et al.* 2007, p. 2; DeGrange 1996, pp. 21–30; Bradley and Cooke 2001, p. 53; Bloxton and Raphael 2008, p. 7).

Additional information on the biology and distribution of the marbled murrelet within the continental United States is available in the original listing document (57 FR 45328; October 1, 1992) and in our 5-year status review (USFWS 2004) (both available online at <http://ecos.fws.gov/speciesProfile/SpeciesReport.do?spcode=B08C>). Information commissioned by the Service on the status and trends of the species in Alaska and British Columbia (Piatt *et al.* 2007) is available online from the U.S. Geological Survey at <http://pubs.usgs.gov/of/2006/1387/pdf/ofr20061387.pdf>.

### Distinct Population Segment Policy

Section 3(15) of the Act defines a "species" to include "\* \* \* any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." The National Marine Fisheries Service (NMFS) and the Service published a joint policy defining the phrase "distinct population segment" on February 7, 1996 (61 FR 4722) (referred to as "DPS policy" in the remainder of this document). According to the DPS policy, two elements must be satisfied in order for a population segment to qualify as a DPS: discreteness of the population segment in relation to the remainder of the species and significance of the population segment to the species. If a population segment qualifies as a DPS, the conservation status of that DPS is evaluated to determine whether it is threatened or endangered.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

If a population is found to be discrete then it is evaluated for significance under the DPS policy on the basis of its importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following: (1) Persistence of the discrete population segment in an ecological setting unusual or unique to the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the population represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historical range, or (4) evidence that the population differs markedly from other populations of the species in its genetic characteristics.

If a population segment is discrete and significant (i.e., it is a DPS) its evaluation for endangered or threatened status is based on the Act's definitions of those terms and a review of the factors listed in section 4(a) of the Act. According to our DPS policy, it may be appropriate to assign different classifications to different DPSs of the same vertebrate taxon.

### Finding

We have reviewed the petition and literature cited in the petition, and evaluated that information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. Based on our evaluation of the information and the criteria specified in 50 CFR 424.14(b)(2), we find the petition presents substantial information indicating that the California, Oregon, and Washington population of the marbled murrelet may not be discrete, and therefore may not meet the criteria for a DPS. As such, we find that the petitioned action may be warranted. The petitioners have essentially reiterated the Service's own conclusion based on our 5-year review; thus we agree that a status review is warranted.

The Service completed a 5-year review of the marbled murrelet's status under the Act on September 1, 2004. That review found that the currently listed entity did not satisfy the discreteness prong of the DPS policy, and therefore was not a valid DPS. The review based this conclusion on data indicating there were no marked physical, physiological, ecological, or behavioral differences at the international border, and a determination that there were no

significant differences between the legal protection provided to the species under Canada's Species at Risk Act and that provided under the Endangered Species Act in the United States.

The Service now believes that the discreteness analysis in the 5-year review was flawed, because it compared current levels of legal protection across the international border, rather than levels of protection that would exist if the marbled murrelet were not listed in the United States. The Service believes that the latter approach is more rational in the context of a 5-year review, because it analyzes discreteness in the same manner as the Service would in an initial listing determination. Nonetheless, because the 2004 5-year review did conclude that the population was not a valid DPS, and because the Service has not formally revisited that conclusion since then, a reasonable person could conclude that the petitioned action may be warranted.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is

warranted is not made until we have completed a thorough status review of the species, which is conducted following a 90-day finding that finds that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted ("substantial 90-day finding"). Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will find that the petitioned action is warranted.

With this substantial 90-day finding we are initiating a rangewide status review of the species, and, once it is completed, we will make a finding on whether delisting the California, Oregon, and Washington population of the marbled murrelet is warranted. Our status review will also consider whether alternative DPS configurations are warranted or whether any additional changes to the status of the species throughout its range or within significant portions of the species' range are warranted.

Because our next 5-year status review will be due around the time our 12-month finding is due, and because the 12-month finding and 5-year status review serve a similar purpose (i.e., to determine the appropriate classification of a species under the Act), the results

of our 12-month finding will be adopted for our 5-year status review.

This finding fulfills the Service's obligation under 16 U.S.C. 1533(b)(3)(A) and its implementing regulations at 50 CFR 424.14(b). It also fulfills our obligation to publish a notice in the **Federal Register** announcing our active review of the status of the marbled murrelet in accordance with 50 CFR 424.21.

#### References Cited

A complete list of all references cited is available upon request from the Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above).

#### Author

The primary authors of this document are staff members of the Western Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 15, 2008.

#### H. Dale Hall,

*Director, Fish and Wildlife Service.*

[FR Doc. E8-22735 Filed 10-1-08; 8:45 am]

**BILLING CODE 4310-55-P**

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.

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Renewal of Advisory Committee on Actuarial Examinations

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Renewal of Advisory Committee.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

**FOR FURTHER INFORMATION CONTACT:** Glenda Shoots, 202-622-8280.

**SUPPLEMENTARY INFORMATION:** The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 15, 2008.

**Carolyn E. Zimmerman,**

*Chairman, Joint Board for the Enrollment of Actuaries.*

[FR Doc. E8-23170 Filed 10-1-08; 8:45 am]

**BILLING CODE 4830-01-P**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development

#### One Hundred and Fifty-Fifth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and fifty-fifth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 2:45 p.m. on October 14, 2008 at the Des Moines Marriott Hotel Downtown located at 700 Grand Avenue, Des Moines, Iowa. The meeting venue is in the Marriott Hotel's Iowa Ballroom, Salons A, B, and C located on the second floor. "Higher Education on a New Stage in Global Agricultural Development" is the theme of BIFAD's October's meeting.

Dr. Robert Easter, Chairman of BIFAD, will preside over the proceedings. Dr. Easter is Dean of the College of Agriculture, Consumer and Environmental Sciences at the University of Illinois, Champaign-Urbana.

The morning session will include an overview of the BIFAD's Conference of Deans (CoD I) with observations and perspectives directed toward the planning of CoD II to be held in mid 2009. The theme for the first Conference of Deans was "Higher Education on a New Stage in Global Agricultural Development." It was held on April 30, 2008. A White Paper with recommendations to USAID was prepared from the output of CoD I. These recommendations on the role of universities in supporting international development, especially with regard to food and agriculture, were presented by the Board to USAID Administrator Henrietta H. Fore on September 9, 2008 and they will be reviewed at the October 14, 2008 meeting.

The White Paper discussion will be followed by two presentations that will offer strategic and long-term perspectives on international agriculture. The first, an agri-business view will be presented by John Deere International; and the second, by Robert Thompson of the University of Illinois, will discuss an economist's view on mitigating the food crises. Capping the morning session, Irv Widders of Michigan State University, will

moderate a panel of university deans and faculty to discuss ideas and ways of "Forming the University Brain Trust for International Agricultural Development" that can mobilize university capacities in collaboration with international agri-businesses and with BIFAD's leadership, to advise and assist USAID.

Following the Board's executive luncheon (closed to the public) the afternoon session shifts to technical topics. In keeping with the mandate of Title XII, a presentation on broadening opportunities for Title XII with USAID will be offered. Also in the afternoon, the FY 2007 Title XII Report will be presented by George Wilson of the USAID EGAT Bureau, Office of Agriculture. Sandra Russo, Chairman of the Strategic Partnership for Agricultural Research and Education (SPARE) will give updates on SPARE's review of actions on ADS-216 (USAID Higher Education Community Partnerships) and the Collaborative Research Support Programs (CRPSs) Guidelines. SPARE is BIFAD's analytical sub-committee. The meeting will adjourn at 2:45 p.m.

The Board meeting is open to the public. The Board welcomes open dialog to promote greater focus on critical issues facing USAID and international agriculture. Note on Public Comments: Due to time constraints, public comments to the Board will be limited to two (2) minutes to accommodate as many as possible. The comments must be submitted ahead of the meeting and they must be in writing.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture, Bureau for Economic Growth, Agriculture and Trade, 1300 Pennsylvania Avenue, NW., Room 2.11-085, Washington DC, 20523-2110 or telephone him at (202) 712-0218 or fax (202) 216-3010.

**Ronald S. Senykoff,**

*USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade, U.S. Agency for International Development.*

[FR Doc. E8-23100 Filed 10-1-08; 8:45 am]

**BILLING CODE 6116-01-P**

**DEPARTMENT OF AGRICULTURE****Submission for OMB Review;  
Comment Request**

September 29, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* Waivers Under Section 6(o) of the Food Stamp Act.

*OMB Control Number:* 0584-0479.

*Summary of Collection:* Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive

the provision for any group of individuals if the Secretary determines "that the areas in which the individuals reside has an unemployment rate of over 10 percent or does not have a sufficient number of jobs to provide employment for the individuals."

*Need and Use of the Information:* The Food and Nutrition Service use the information provided by State food stamp agencies to evaluate whether the statutory requirements for a waiver of the food stamp time limit have been met and to determine specifically whether the designated areas' unemployment rate is over ten percent or if there is a lack of sufficient jobs available. If the information is not collected, the State Food Stamp agencies could not obtain waivers of time limits contained in Section 6(o) of the Act.

*Description of Respondents:* State, Local, or Tribal Government; Individuals or household; Federal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Reporting: On occasion, Annually.

*Total Burden Hours:* 1,680.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8-23249 Filed 10-1-08; 8:45 am]

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE****Grain Inspection, Packers and  
Stockyards Administration****Request for Extension and Revision of  
a Currently Approved Information  
Collection**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces our intention to request a 3-year extension and revision of a currently approved information collection for "Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers."

**DATES:** We will consider comments that we receive by December 1, 2008.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- E-mail: [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov).

- Mail: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

- Fax: (202) 690-2755.

- Hand Delivery or Courier: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250-3604.

- Internet: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.

*Background Documents:* Information collection package and other documents relating to this action will be available for public inspection in the above office during regular business hours.

*Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

**FOR FURTHER INFORMATION CONTACT:** For information regarding the collection of information activities and the use of the information, contact Tess Butler (202) 720-7486, or at the address listed above.

**SUPPLEMENTARY INFORMATION:** Congress enacted The United States Grain Standards Act (USGSA) (7 U.S.C. 71-87k) to facilitate the marketing of grain in interstate and foreign commerce. The USGSA, with few exceptions, requires that all grain shipped from the United States must be officially inspected and officially weighed. The USGSA authorizes the Department of Agriculture to waive the mandatory inspection and weighing requirements of the USGSA in circumstances when the objectives of the USGSA would not be impaired.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) amended section 7 CFR 800.18 of the regulations to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. GIPSA determined that this action was consistent with the objectives of the USGSA and would promote the continuing development of the high quality specialty grain export market.

To ensure that exporters of high quality specialty grain complied with this waiver, GIPSA required exporters to maintain records generated during the normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes (70 FR 73556). These records shall be

maintained for a period of 3 years. This information collection requirement is essential to ensure that exporters who ship high quality specialty grain in containers comply with the waiver provisions. GIPSA did not require exporters of high quality specialty grain to complete and submit new Federal government record(s), form(s), or report(s).

*Title:* Export Inspection and Weighing Waiver for High Quality Specialty Grain Transported in Containers.

*OMB Number:* 0580-0022.

*Expiration Date of Approval:* December 31, 2008.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* GIPSA amended the regulations under the United States Grain Standards Act (USGSA) to waive the mandatory inspection and weighing requirements for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers. To ensure compliance with this waiver, GIPSA required these exporters to maintain records generated during their normal course of business that pertain to these shipments and make these documents available to GIPSA upon request, for review and copying purposes.

#### Grain Contracts

*Estimate of Burden:* Public reporting and recordkeeping burden for maintaining contract information was estimated to average 6.0 hours per exporter.

*Respondents:* Exporters of high quality specialty grain in containers.

*Estimated Number of Respondents:* 80.

*Estimated Number of Respondents per Request:* 1.

*Estimated Total Burden on Respondents:* 480 Hours.

*Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information

technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**James E. Link,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. E8-23260 Filed 10-1-08; 8:45 am]

**BILLING CODE 3410-KD-P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* Export Trade Certificate of Review.

*OMB Control Number:* 0625-0125.

*Form Number(s):* ITA-4093.

*Type of Request:* Regular submission.

*Burden Hours:* 384.

*Number of Respondents:* 12.

*Average Hours Per Response:* 32.

*Needs and Uses:* Title III of the Export Trading Company Act (Act) authorizes the Department of Commerce, with the concurrence of the Department of Justice (Departments), to issue an Export Trade Certificate of Review to any person who establishes that their proposed export trade, export trade activities, and methods of operation meet the standards set forth in the Act. The information contained in the application will be used by the Departments in performing the antitrust analysis required by the Act. The purpose of an analysis is to make a determination as to whether or not to issue an Export Trade Certificate of Review. A certificate provides its holder and members named in the certificate: (a) Immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private lawsuits by limiting their liability in private actions to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors.

*Affected Public:* Business or other for-profit organizations; Not-for-profit

institutions; state, local or tribal government.

*Frequency:* Annually.

*Respondent's Obligation:* \$0.

*OMB Desk Officer:* Wendy Liberante, (202) 395-3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, fax number (202) 395-7285 or via the Internet at [Wendy\\_L\\_Liberante@omb.eop.gov](mailto:Wendy_L_Liberante@omb.eop.gov).

Dated: September 24, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-22781 Filed 10-1-08; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### Census Bureau

#### Proposed Information Collection; Comment Request; National Immunization Survey Evaluation Study

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before December 1, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Andrea L. Piani, Census

Bureau, Room HQ-6H035, Washington, DC 20233-8400, (301) 763-5379.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

At the behest of the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, the Census Bureau plans to conduct an evaluation study of the National Immunization Survey (NIS). The purpose of this study is to explore how collaborating with the Census Bureau and using the American Community Survey (ACS) as the sampling frame for selecting eligible households could result in improvements to the current NIS. Use of the ACS as a sampling frame, which includes non-landline households and identifies households with age-eligible children, could overcome the current NIS non-coverage issue and substantially reduce data collection costs.

The NIS is a continuing, nationwide random-digit-dialing (RDD) telephone survey of families with children ages 19 to 35 months, or teens ages 13-17 years followed by a mailed survey to children's immunization providers. Since the survey's inception to the present, private contractors have conducted the NIS for the CDC. National, state, and local level estimates of vaccine-specific coverage, including newly licensed vaccines, are produced annually.

The NIS was established to provide an on-going, consistent data set for analyzing vaccination coverage among young children in the United States and disseminating this information to state and local health departments and other interested public health partners. Legal authorization to conduct the survey is granted by Title 13, United States Code, Section 8 and by the Public Health Service Act, Title 42, United States Code, Sections 306 & 2102(a)(7).

In response to one of the goals of the 1993 Childhood Immunization Initiative, to monitor childhood immunization coverage and provide important statistics about childhood vaccinations and related health matters, funding for the NIS was provided and data collection began in April 1994. Furthermore, the scope of the program expanded to include assessing progress towards the national vaccination goals set forth by the Childhood Immunization Initiative of 1996. Currently, the NIS provides vaccination coverage estimates annually for children aged 19-35 months and teens aged 13-17 years, by state and at least six city/county areas. The information collected is used to evaluate state and local

immunization programs, to develop health care policies, and to assist in the determination of funding allocations for the Vaccines for Children (VFC) program. Since 1994, the VFC program has helped families of children who may not otherwise have access to vaccines by providing free vaccines to doctors who serve them.

In recent years, the NIS has covered a decreasing portion of the target population, particularly children aged 19-35 months living in households with cell phone, but not landline telephone service. As part of the CDC's continuing effort to evaluate and refine the NIS, this study is intended to explore how partnering with the Census Bureau and sampling from the ACS for households with age-eligible children having landline, cell phone only, and no telephone service could result in improvements to the survey especially in terms of coverage, response, and cost.

##### **II. Method of Collection**

Data collection for the NIS Evaluation Study will use a multi-mode approach. First, computer-assisted telephone interviewing (CATI) will be conducted with households with age-eligible children (19-35 months) to collect information on the vaccinations received for each age-eligible child, as well as information on vaccination providers. Second, in-person follow-up interviews with non-responders, including households with no telephone service, will be conducted. Due to constraints in time and resources, the follow-up interviews for the evaluation study will be conducted using paper-and-pencil interviewing methods. If the results from the evaluation study prove beneficial, in-person follow-up interviews for the national survey will be conducted using computer-assisted personal interviewing (CAPI) methods whereby field representatives collect the data from respondents using laptop computers. Third, vaccination providers will be contacted through the use of a paper mail-out/mail-back process. Providers will submit information on vaccinations administered and the dates the vaccinations were administered for each child 19 through 35 months. Only providers of age-eligible children whose parent or guardian participated in the telephone or paper follow-up survey and who gave consent to follow up with the provider will be contacted. The provider information on the type of vaccine, the number of vaccinations, and the dates of vaccination will be used to estimate vaccination coverage levels; the information obtained from the parent or guardian will be used to

evaluate the completeness of the provider-reported information.

##### **III. Data**

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals/households; business or other for-profit organizations (Health Care Providers).

*Estimated Number of Respondents:* 1,200 children in 1,185 households; 1,510 providers.

*Estimated Time per Response:* 28 minutes, 2 seconds (household component); 25 minutes, 2 seconds (provider verification component).

*Estimated Total Annual Burden Hours:* 564 hours (household component), 634 hours (provider verification component).

*Estimated Total Annual Cost:* \$0.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* All information collected about individuals or households is confidential by law Title 13, United States Code, Section 9. Legal authorization to conduct the survey is granted by Title 13, United States Code, Section 8 and by the Public Health Service Act, Title 42, United States Code, Sections 306 & 2102(a)(7).

##### **IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2008.

##### **Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-23190 Filed 10-1-08; 8:45 am]

**BILLING CODE 3510-07-P**

**DEPARTMENT OF COMMERCE****International Trade Administration****Proposed Information Collection; Comment Request; Comment Card for E-mail Taglines**

**AGENCY:** U.S. and Foreign Commercial Service.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before December 1, 2008.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Suzan Winters—Phone: (202) 482-6042, [Suzan.Winters@mail.doc.gov](mailto:Suzan.Winters@mail.doc.gov), Fax: (202) 482-2599.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service (CS) currently uses customer satisfaction surveys to collect feedback from U.S. business clients that pay for services performed by CS. These surveys ask the client to evaluate CS on its customer service provision. The results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In addition to soliciting client feedback after a service is delivered, the CS would like to add a tagline with a link to a Comment Card at the bottom of all employees' e-mail messages to enable clients to submit feedback anytime they see fit. The actual tagline would encourage recipients of the e-mail to click the Comment Card link and

provide feedback on service quality. Samples of taglines could be similar to:

(1) "Please tell me about the quality of service that I have provided to you;" or

(2) "Please let me know how well I have served you."

A link to a Comment Card would immediately follow the tagline. The purpose of the attached card is to collect feedback from U.S. businesses that interact with CS employees. This information will be used for quality assurance purposes. Survey responses will be used to assess client satisfaction, identify client issues, record client results and recognize exemplary service providers.

**II. Method of Collection**

Comment Card link embedded in employees' e-mail taglines; clients will fill out and submit the Comment Cards electronically.

**III. Data**

*OMB Control Number:* None.

*Form Number(s):* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time per Response:* 5-10 minutes.

*Estimated Total Annual Burden Hours:* 833.

*Estimated Total Annual Cost to Public:* \$0.

**V. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 26, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-23191 Filed 10-1-08; 8:45 am]

**BILLING CODE 3510-FP-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-851]

**Certain Preserved Mushrooms From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 16, 2008, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) results of redetermination pursuant to the CIT's remand in *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 07-85 (May 24, 2007) (*Gerber v. United States I*). See Results of Redetermination Pursuant to Remand, dated September 18, 2007 (found at <http://ia.ita.doc.gov/remands>); and *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 08-97 (September 16, 2008) (*Gerber v. United States III*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period of review (POR) of February 1, 2001, through January 31, 2002. See *Notice of Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review of Certain Preserved Mushrooms From the People's Republic of China*, 68 FR 41304 (July 11, 2003) (*Final Results*).

**DATES:** *Effective Date:* September 26, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

Washington, DC 20230; telephone (202) 482-1766.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 3, 2003, the Department issued its final results in the antidumping duty administrative review of certain preserved mushrooms from the PRC covering the POR of February 1, 2001, through January 31, 2002. See *Final Results*. In the *Final Results*, the Department applied total adverse facts available (AFA) in calculating the cash deposit and assessment rates for respondents Gerber Food (Yunnan) Co., Ltd. (Gerber) and Green Fresh (Zhangzhou) Co., Ltd. (Green Fresh). See *Final Results*, 68 FR at 41306. The Department found that Gerber and Green Fresh were involved in a business arrangement during the POR that resulted in the circumvention of the proper payment of cash deposits on certain POR entries of subject merchandise made by Gerber. *Id.* As total AFA, the Department applied the PRC-wide rate of 198.63 percent to both companies. Gerber and Green Fresh challenged the Department's resorting to total AFA to determine their cash deposit and assessment rates for the POR in the *Final Results*.

In *Gerber Food (Yunnan) Co., Ltd. and Green Fresh (Zhangzhou) Co., Ltd. v. United States*, Slip Op. 05-84 (July 18, 2005) (*Gerber v. United States I*), the CIT remanded the *Final Results*, holding that the Department's application of the "facts otherwise available" and "adverse inference" provisions was not supported by substantial record evidence and was otherwise not in accordance with law. In *Gerber v. United States II*, the CIT held that the Department's Redetermination Pursuant to Court Remand complied with the remand order in *Gerber v. United States I* in some respects but not others, and remanded the redetermination to the Department for further reconsideration.

On September 18, 2007, the Department issued its final results of redetermination pursuant to *Gerber v. United States II*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department: (1) Recalculated the assessment rate for Gerber using a rate other than the PRC-wide rate as partial AFA with respect to certain POR sales of subject merchandise produced by Gerber for which the customs entry documentation identified Green Fresh as the exporter; and (2) recalculated the assessment rate for Green Fresh based on the data it reported, exclusive of the aforementioned transactions, without resorting to facts available or adverse

inferences. The Department's redetermination resulted in changes to the *Final Results* weighted-average margins for Gerber from 198.63 percent to 92.11 percent, and for Green Fresh from 84.26 percent to 31.55 percent.

**Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Gerber v. United States III* on September 16, 2008, constitutes a final decision of that court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise during the POR from Gerber and Green Fresh based on the revised assessment rates calculated by the Department.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 26, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E8-23269 Filed 10-1-08; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-570-921]

**Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the "Department") has determined that countervailable subsidies are being provided to producers and exporters of lightweight thermal paper ("LWTP")

from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

**DATES:** *Effective Date:* October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:**

David Layton, David Neubacher, or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0371, (202) 482-5823, or (202) 482-1279, respectively.

**Petitioner**

The Petitioner in this investigation is Appleton Papers, Inc. ("the Petitioner").

**Period of Investigation**

The period for which we are measuring subsidies, or period of investigation ("POI"), is January 1, 2006, through December 31, 2006.

**Case History**

The following events have occurred since the announcement of the preliminary determination on March 10, 2008. See *Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 13850 (March 14, 2007) ("*Preliminary Determination*").

The Department issued questionnaires to the Government of the People's Republic of China ("GOC"), Shanghai Hanhong Paper Co., Ltd. ("Hanhong"), Guangdong Guanhao High-Tech Co., Ltd. ("GG") and GG's affiliated input supplier Zhanjiang Guanlong Paper Industrial Co., Ltd ("ZG") regarding new subsidy allegations filed by the Petitioner on February 8 and February 14, 2008. We received responses to these questionnaires and to several supplemental questionnaires, and comments from the Petitioner regarding the responses.

The Petitioner and GG/ZG submitted additional factual information consistent within the deadline for the submission of factual information established by 19 CFR 351.301(b)(1).

In the *Preliminary Determination*, the Department stated that it would accept the claim of respondent Xiamen Anne Paper Co., Ltd. ("Xiamen Anne") that it made no shipments of subject merchandise during the POI, subject to

verification.<sup>1</sup> On May 6, 2008, counsel for Xiamen Anne informed the Department that Xiamen Anne would not participate further in the investigation and canceled the scheduled on-site verification of its shipments. See Memorandum to File, "E-mail Correspondence with Respondent Xiamen Anne Paper Co. Ltd." (May 7, 2008) ("Xiamen Anne Memo"). On May 7, 2008, the Department informed Xiamen Anne that if it did not participate in the on-site verification, the Department might use facts otherwise available, in accordance with section 776 of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.308. See further discussion in the "Use of Facts Otherwise Available" section below.

From June 18 through July 1, 2008, we conducted verification of the questionnaire responses submitted by the GOC, Hanhong, GG and ZG.

On September 2, 2008, we issued our post-preliminary determination regarding the new subsidy allegations and certain other programs discovered in the course of the investigation. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, entitled "Post-Preliminary Findings for New Subsidy Allegations," dated September 2, 2008, which is on file in the Central Records Unit ("CRU").

On September 2, 2008, the Department issued a preliminary determination that ZG was uncreditworthy for the years 2003 and 2004. See Memorandum from David Neubacher to Susan Kuhbach, Senior Director, Office 1, regarding "Preliminary Creditworthiness Determination for Zhanjiang Guanlong Paper Industrial Co., Ltd.," dated September 2, 2008, which is on file in the CRU.

We received case briefs from the GOC, GG/ZG and the Petitioner on September 10, 2008. The same parties submitted rebuttal briefs on September 15, 2008.

### Scope of the Investigation

The merchandise subject to this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter ("g/m<sup>2</sup>") (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>2</sup> with or

without a base coat<sup>3</sup> on one or both sides; with thermal active coating(s)<sup>4</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>5</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.<sup>6</sup> Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Scope Comments

The scope listed above has changed from the *Preliminary Determination*.

We set aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encouraged all interested parties to submit such comments within 20 calendar days of signature of the *Initiation Notice*.<sup>7</sup> We only received comments on the scope from the Petitioner. See the Petitioner's letter to the Department regarding, "Lightweight Thermal Paper from China, Germany, and Korea," dated November 19, 2007. Petitioner requested that the Department

<sup>3</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>4</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>5</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>6</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for "other," including LWTP). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS, including HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

<sup>7</sup> See *Notice of Initiation of Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China*, 72 FR 62209, 62210 (November 2, 2007) ("Initiation Notice").

include in LWTP's scope language the HTSUS subheadings 3703.10.60,<sup>8</sup> 4811.59,<sup>9</sup> 4820.10,<sup>10</sup> and 4823.40,<sup>11</sup> because LWTP may enter the United States under one of these HTSUS subheadings. Specifically, the Petitioner contends that HTSUS subheading 3703.1060 should be included because LWTP is sensitive to heat radiation; LWTP with certain latex topcoats could enter as paper coated with plastic under HTSUS subheading 4811.59; HTSUS subheading 4820.10's description may encompass products converted from thermal paper; and HTSUS subheading 4823.40's description appears to encompass LWTP not elsewhere specified within the HTSUS.

On April 11, 2008, and April 16, 2008, the Department received a request from U.S. Customs and Border Protection ("CBP") to update the antidumping and countervailing duty ("AD/CVD") module for LWTP from the PRC. Specifically, CBP requested that the Department add HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 to the AD/CVD module. See the Department's memorandum to the file entitled, "Request from Customs and Border Protection to update AD/CVD Module," dated April 17, 2008. Based on the requests from the Petitioner and CBP, we are modifying the scope of this investigation to include the additional HTSUS subheadings.

### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), section 701(a)(2) of the Act applies to this investigation. Accordingly, the International Trade Commission ("ITC") must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to a U.S. industry. On December 11, 2007, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly

<sup>8</sup> See ITC website located at <http://usitc.gov/> which describes 3703.1060 as "photographic paper, paperboard, and textiles, sensitized: other."

<sup>9</sup> See *id.*, which describes HTSUS subheading 4859.10 as "other: In strips or rolls of a width exceeding 15 cm or in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."

<sup>10</sup> See *id.*, which describes HTSUS subheading 4820.10 as "Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles."

<sup>11</sup> See *id.*, which describes HTSUS subheading 4823.40 as "Rolls, sheets and dials, printed for self-recording apparatus."

<sup>1</sup> See *Preliminary Determination* at 73 FR 13850.

<sup>2</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of these investigations.

subsidized imports of LWTP from the People's Republic of China ("PRC") and Germany. See *Certain Lightweight Thermal Paper from China, Germany and Korea*, Investigation Nos. 701-TA-415 and 731-TA-1126-1128, 72 FR 70343 (Preliminary) (December 11, 2007).

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the decision memorandum, which is hereby adopted by this notice. See "Issues and Decision Memorandum for the Final Determination," from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated September 25, 2008 ("Decision Memorandum"). Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

#### Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this investigation, Shenzhen Yuanming Industrial Development Co., Ltd. ("Shenzhen Yuanming"), MDCN Technology Co., Ltd. ("MDCN"), and Xiamen Anne did not provide the requested information that is necessary

to determine a CVD rate for this final determination. Specifically, MDCN did not respond to the Department's December 14, 2007, request for shipment data and never participated in the investigation. Shenzhen Yuanming responded to the Department's December 14, 2007, request for shipment data, but failed to respond to the Department's January 4, 2008, CVD questionnaire and ceased to participate further in the investigation after the December 26, 2007, submission of its shipment data. In the case of Xiamen Anne, on November 29, 2007 it notified the Department that it did not ship the subject merchandise to the United States during the POI. However, Xiamen Anne did not permit the Department to verify Xiamen Anne's claim of no shipments of subject merchandise, and since May 6, 2008, Xiamen Anne has not participated in the investigation. See Memorandum to File, "E-mail Correspondence with Respondent Xiamen Anne Paper Co. Ltd." (May 7, 2008). Thus, in reaching our final determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we have based the countervailing duty rates of Shenzhen Yuanming, MDCN, and Xiamen Anne on facts otherwise available.

In selecting from among the facts available, the Department has determined that an adverse inference is warranted, pursuant to section 776(b) of the Act because, in addition to not fully responding to all of our requests for information, MDCN, Shenzhen Yuanming and Xiamen Anne withdrew from all participation in the investigation. MDCN failed to respond to any of the Department's questionnaires. Shenzhen Yuanming responded to the Department's December 14, 2008, request for shipment data, but thereafter ceased to participate in the investigation. Xiamen Anne notified the Department that it had no shipments of subject merchandise, but after tentatively scheduling an on-site verification, it decided to cancel the verification and stop its participation in the proceeding. Thus, MDCN, Shenzhen Yuanming, and Xiamen Anne failed to cooperate by not acting to the best of their abilities to comply with the Department's requests for information, and our final determination is based on total AFA. Accordingly, we find that an adverse inference is warranted to ensure that MDCN, Shenzhen Yuanming, and Xiamen Anne will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session (1994), at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

#### Selection of the Adverse Facts Available Rate

Parties can find a full discussion of the selection of the AFA rate at Comment 1 in the *Decision Memorandum*, which is on file in the CRU.

#### Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation: GG, Hanhong, MDCN, Shenzhen Yuanming, and Xiamen Anne. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted average countervailable

subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776. As the rates for MDCN, Shenzhen Yuanming, and Xiamen Anne were calculated under section 776 of the Act, those rates were not reflected in the "all others" rate.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we determined an "all others" rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. The "all others" rate does not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that can be used to calculate the "all others" rate, GG's rate, we have assigned that rate to all other non-investigated companies.

| Exporter/manufacturer                              | Net subsidy rate           |
|--|----------------------------|
| Guangdong Guanbao High-Tech Co., Ltd.              | 13.17                      |
| Shanghai Hanhong Paper Co., Ltd.                   | 0.57 ( <i>de minimis</i> ) |
| Shenzhen Yuanming Industrial Development Co., Ltd. | 137.25                     |
| MDCN Technology Co., Ltd.                          | 123.65                     |
| Xiamen Anne Paper Co., Ltd.                        | 123.65                     |
| All Others .....                                   | 13.17                      |

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of LWTP from the PRC which were entered or withdrawn from warehouse, for consumption on or after March 14, 2008, the date of the publication of the *Preliminary Determination* in the **Federal Register**, except for entries from Hanhong, which had a *de minimis* rate.

In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes on all shipments of the subject merchandise entered, or withdrawn from the warehouse, for consumption on or after July 12, 2008, but to continue the suspension of liquidation of entries made from March 14, 2008 through July 11, 2008.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a

cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 25, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix

##### List of Comments and Issues in the Decision Memorandum

- Comment 1: The Department's Authority to Apply the Countervailing Duty Law to China.
- Comment 2: Cut-off Date for Recognition of Subsidies.
- Comment 3: Adverse Facts Available ("AFA").
- Comment 4: Sales Denominator for GG and ZG.
- Comment 5: Government Policy Lending—Specificity.
- Comment 6: Government Policy Lending—Financial Contribution.

Comment 7: Government Policy Lending—Whether Particular Banks Are "Authorities".

Comment 8: Chinese Interest Rates as the Benchmark.

Comment 9: Benchmark Rates.

Comment 10: Whether to Countervail Certain Loans Received from Shareholders.

Comment 11: Provision of Electricity for Less Than Adequate Remuneration.

Comment 12: Provision of Land for Less Than Adequate Remuneration.

Comment 13: Stamp Tax and Income Tax Exemption Under Non-Tradable Share Reform.

Comment 14: Whether ZG is Creditworthy.

Comment 15: Double Counting/Overlapping Remedies.

[FR Doc. E8–23271 Filed 10–1–08; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### INTERNATIONAL TRADE ADMINISTRATION

(A–428–840)

#### Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has determined that imports of lightweight thermal paper (LWTP) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final estimated margins of sales at LTFV are listed below in the section entitled "Final Determination Margins."

**EFFECTIVE DATE:** October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Cindy Robinson or George McMahan, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3797 or (202) 482–1167, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On May 13, 2008, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of LWTP from Germany. See *Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27498

(May 13, 2008) (*Preliminary Determination*).

In the *Preliminary Determination*, based on our examination of the petitioner's targeted dumping allegation filed on March 27, 2008, we conducted an analysis to determine whether targeted dumping occurred. We preliminarily determined that there is not a pattern of export prices (EPs) for comparable merchandise that differ significantly among customers, regions or by time period.<sup>1</sup>

In the *Preliminary Determination*, the Department invited comments on the overall application of the targeted dumping test applied in this proceeding and on the *Preliminary Determination* as a whole.<sup>2</sup> We received comments within the case briefs submitted by the petitioner<sup>3</sup> and the respondent, Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, Koehler) on July 31, 2008. Koehler and Mitsubishi HiTec Paper Flensburg GmbH and Mitsubishi HiTec Paper Bielefeld GmbH (collectively, Mitsubishi HiTec Paper) and Mitsubishi International Corporation (MIC)<sup>4</sup> submitted rebuttal comments on August 5, 2008.

We conducted sales and cost verifications of the questionnaire responses submitted by Koehler. See Memorandum to the File from George McMahon and Cindy Robinson, Case Analysts, through James Terpstra, Program Manager, Office 3, entitled "Verification of the Sales Response of Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, Koehler) in the Antidumping Duty Investigation of Lightweight Thermal Paper (LWTP) from Germany," dated July 24, 2008 (Koehler Sales Verification Report); see also Memorandum to the File through Neal M. Halper, from Robert B. Greger, entitled "Verification of the Cost Response of Papierfabrik August Koehler AG in the Antidumping Investigation of Lightweight Thermal Paper from Germany," dated June 18, 2008 (Koehler Cost Verification Report). All verification reports are on file and available in the Central Records Unit (CRU), Room 1117, of the main Department of Commerce building.

<sup>1</sup> See *Preliminary Determination* at 27500.

<sup>2</sup> *Id.* at 27498, 27500, and 27503.

<sup>3</sup> The petitioner in this investigation is Appleton Papers, Inc.

<sup>4</sup> Mitsubishi HiTec Paper and MIC were also identified by the petitioner as potential respondents in the petition submitted in this investigation. However, the Department selected Koehler as the only mandatory respondent due to the Department's resource constraints. See "Respondent Selection Memorandum" dated December 4, 2007, for further details. Therefore, Mitsubishi HiTec Paper and MIC are not mandatory respondents in this investigation.

Based on the Department's findings at verification, as well as the minor corrections presented by Koehler at the start of its verifications, we requested during verification that respondent submit revised sales databases. As requested, Koehler submitted its revised sales databases at verification on June 26, 2008.

#### Period of Investigation

The POI is July 1, 2006, to June 30, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

#### Scope of the Investigation

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>5</sup> with or without a base coat<sup>6</sup> on one or both sides; with thermal active coating(s)<sup>7</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>8</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 4811.90.8040 and 4811.90.9090.<sup>9</sup> As discussed below, we added to the scope of the investigation the following HTSUS subheadings:

<sup>5</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo rolls and converted rolls (as well as LWTP in any other forms, presentations, or dimensions) are covered by the scope of this investigation.

<sup>6</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>7</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>8</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>9</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for  $\geq$ other,  $\geq$  including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for  $\geq$ other,  $\geq$  including LWTP).

3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

#### Scope Comments

On November 19, 2007, the petitioner submitted scope comments in which it requested that the Department add the following additional HTSUS subheadings to the scope of the investigation: HTSUS subheading 3703.10.60, 4811.59, 4820.10, and 4823.40 based on the claim that subject merchandise may also enter under these HTSUS subheadings.

On April 11, 2008, and April 16, 2008, the Department received letters from the National Import Specialists at U.S. Customs and Border Protection (CBP) requesting that HTSUS subheadings 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00 be added to the scope of the antidumping duty investigation of LWTP from Germany and simultaneous antidumping duty and countervailing duty investigations of LWTP from the People's Republic of China (PRC) on the basis that entries of subject merchandise could be classified therein. See Memorandum to the File from the Team to the File through James Terpstra, entitled "Request from Customs and Border Protection to update AD /CVD Module," dated April 17, 2008. Since the *Preliminary Determination*, no party to this proceeding has commented on this issue and we have found no additional information that would compel us to reverse our preliminary decision to add the aforementioned HTSUS subheadings to the scope of the investigation. Thus, for purposes of the final determination, we have added these additional subheadings to the scope of this investigation.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Lightweight Thermal Paper from Germany" (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated September 25, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to

this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Targeted Dumping

In the *Preliminary Determination*, with respect to targeted dumping, we followed the methodology outlined in the post-preliminary targeted dumping analysis in the investigations of steel nails from the People's Republic of China and the United Arab Emirates. See Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, RE: Antidumping Duty Investigation of Certain Steel Nails from the People's Republic of China (PRC) and the United Arab Emirates (UAE), Subject: Post-Preliminary Determinations on Targeted Dumping, dated April 21, 2008 (Nails Targeted Dumping Memorandum).<sup>10</sup> Based on the targeted dumping test that we applied in the *Preliminary Determination*, we did not find a pattern of EPs for comparable merchandise that differ significantly among customers, regions or by time period.<sup>1</sup> As a result, we applied the average-to-average methodology to the EPs of all of Koehler's sales to the United States during the POI and calculated a margin of 6.49 percent for Koehler.<sup>12</sup>

In the *Preliminary Determination*, the Department applied the targeted dumping test based on the methodology outlined in the Nail Targeted Dumping Memorandum and found that all three allegations of targeted dumping (customer, region, and time period) failed the test. We have analyzed the case and rebuttal briefs<sup>13</sup> with respect to targeted dumping issues submitted for the record in this investigation and considered the changes made to the targeted dumping test applied in the final determinations of *Nails* and *PRC Tires*.<sup>14</sup> As a result of our analysis, we

utilized the *Nails* targeted dumping test from the *Preliminary Determination* and applied certain modifications from *Nails* and *PRC Tires* for purposes of the final determination.<sup>15</sup>

As in the *Preliminary Determination*, we did not find a pattern of EPs for comparable merchandise that differ significantly among customers, regions or by time period. For further discussion, see Comments 2 through 4 of the Decision Memorandum. See also: "Final Analysis Memorandum for Sales Koehler," dated September 25, 2008 (Final Sales Memorandum) and Memorandum to Neal M. Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Koehler," dated September 25, 2008 (Final Cost Memorandum).

### Verification

As provided in section 782(i) of the Act, we verified the sales and cost information submitted by Koehler for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Koehler. See "Koehler Sales Verification Report" and "Koehler Cost Verification Report."

### Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we have made certain changes to the margin calculation for Koehler. For a discussion of these changes, see the Final Sales Memorandum and Final Cost Memorandum.

### Final Determination Margins

We determine that the following weighted-average dumping margin exists for the period July 1, 2006, to June 30, 2007:

Memorandum (Steel Nails from the UAE) at Comment 5; see also *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008), and accompanying Issues and Decision Memorandum (Steel Nails from the PRC) at Comments 3, 5, and 9 (collectively, *Nails*); see also *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008), and accompanying Issues and Decision Memorandum (*PRC Tires*) at Comments 23, B and 23.G.

<sup>15</sup> Id.

| Manufacturer/Exporter                                    | Weighted-Average Margin (percent) |
|--|-----------------------------------|
| Papierfabrik August Koehler AG and Koehler America, Inc. | 6.50                              |
| All Others .....   | 6.50                              |

### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

### Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Germany, entered, or withdrawn from warehouse, for consumption on or after May 13, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margins, as indicated in the chart above. These suspension-of-liquidation instructions will remain in effect until further notice.

### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

### Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

<sup>10</sup> See *Preliminary Determination* at 27500.

<sup>11</sup> Id.

<sup>12</sup> Id. at 27503.

<sup>13</sup> See the petitioner's case brief, dated July 31, 2008; see also Koehler and Mitsubishi HiTec Paper and MIC's rebuttal briefs, dated August 5, 2008.

<sup>14</sup> See *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and accompanying Issues and Decision

and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 25, 2008.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

## Appendix -- Issues in Decision Memorandum

### I. GENERAL ISSUES

*Comment 1:* Ministerial Error Correction

### II. TARGETED DUMPING ISSUES

*Comment 2:* Whether the Department's Targeted Dumping Test is Flawed and Should be Replaced with the "preponderance at two percent test" (P/2 Test)

*Comment 3:* Whether the Department Should Apply any Margins Calculated for Koehler Pursuant to its Targeted Dumping Test to Mitsubishi HiTec Paper and the Non-Selected Respondents

*Comment 4:* Whether Margins Should be Calculated Without Applying Offsets for Non-Dumped Sales

[FR Doc. E8-23270 Filed 10-1-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-920]

#### Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 2, 2008.

**SUMMARY:** On May 13, 2008, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping investigation of lightweight thermal paper ("LWTP") from the People's Republic of China ("PRC"). The period of investigation ("POI") is January 1, 2007, to June 30, 2007. We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our calculations for the mandatory respondents. The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

#### FOR FURTHER INFORMATION CONTACT:

Frances Veith or Demitrios Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4295 or (202) 482-2623, respectively.

#### Final Determination

We determine that LWTP from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

#### SUPPLEMENTARY INFORMATION:

##### Case History

The Department published its preliminary determination of sales at LTFV on May 13, 2008. *See Lightweight Thermal Paper From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27504 (May 13, 2008) ("Preliminary Determination"). Additionally, the Department postponed the deadline for the final determination by 60 days to September 25, 2008. *See Preliminary Determination*, at 27504. On May 28, 2008, Appleton Papers, Inc. ("petitioner") submitted comments regarding Guan hao's eligibility for a separate rate. From June 2 through 13, 2008, the Department conducted verifications of Hanhong International Limited, Shanghai Hanhong Paper Co., Ltd., and Hong Kong Hanhong Ltd. (collectively ("Hanhong")) and Guangdong Guan hao High-Tech Co., Ltd. ("Guan hao") and released its verification reports for both companies on July 16, 2008. *See* the "Verification" section below for additional information. On June 12, 2008, petitioner filed a timely request for a public hearing. On June 23, 2008, petitioner and Guan hao submitted surrogate value information for the record. On July 2, 2008, the Department placed its updated wage rate calculations on the record. On July 24, 2008, case briefs were filed by both petitioner and Hanhong. On July 29, 2008, Hanhong and Guan hao each filed rebuttal briefs. On August 14, 2008, petitioner withdrew its request for a hearing.

#### Targeted Dumping

On May 5, 2008, petitioner filed an allegation of targeted dumping with respect to patterns of Hanhong's

constructed export prices ("CEPs") for comparable merchandise that differ significantly among purchases and periods of time. Petitioner limited its targeted dumping allegation to patterns of prices found in Hanhong's CEP sales. In our *Preliminary Determination*, we found that Hanhong was not affiliated with its U.S. customer, and based our margin analysis on Hanhong's export price ("EP") sales. As a result, petitioner's targeted dumping allegation was inapplicable to our margin calculations. Since the *Preliminary Determination*, no interested party has provided any argument or information on the record concerning petitioner's targeted dumping allegation. In our final determination, we have continued to find Hanhong unaffiliated with its U.S. customer, and consequently, based our margin calculations on Hanhong's EP sales. As a result, petitioner's allegation of targeted dumping is not applicable to our margin analysis. Therefore, we did not address it in this final determination.

#### Period of Investigation

The period of investigation ("POI") is January 1, 2007, through June 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2007. *See* 19 CFR 351.204(b)(1).

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by Hanhong and Guan hao for use in our final determination. *See* the Department's verification reports on the record of this investigation in the Central Records Unit ("CRU"), Room 1117 of the main Department building, with respect to these entities. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Lightweight Thermal Paper from the People's Republic of China: Issues and Decision Memorandum," dated concurrently with this notice and hereby adopted by this notice ("Issues and Decision Memorandum"). A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision

Memorandum is a public document on file in the CRU and accessible on the Web at [ia.ita.doc.gov/frn](http://ia.ita.doc.gov/frn). The paper copy and electronic version of the memorandum are identical in content.

### Changes Since the Preliminary Determination

- *Financial statements*—In the *Preliminary Determination*, we calculated financial ratios based on two Indian producers' financial statements (*i.e.*, Parag Copigraph Pvt. Ltd. ("Parag") and Alpha Carbonless Paper Ltd. for the fiscal year ending March 31, 2006. For the final determination, we have determined to use only Parag's financial statement for the fiscal year ending March 31, 2007. See Comment 2.

- *Financial ratios*—For the final determination, we made certain changes to the financial ratio calculations from the *Preliminary Determination*. We excluded the line items for freight and cartage-outward, and freight and cartage-export from the Selling, General, and Administrative expenses ("SG&A") ratio calculation obtained from Parag's financial statement. Additionally, we included Parag's line items for miscellaneous income, other income, and interest revenue (because all of Parag's interest revenue was on current assets) as an offset to the SG&A ratio calculation and we have continued to include export expense in our calculation of the surrogate financial ratio for SG&A. See Comment 3.

- *Base paper surrogate value*—For the *Preliminary Determination*, we calculated Guanhao's surrogate value for base paper using WTA import statistics. For the final determination, we have continued to calculate Guanhao's surrogate value using WTA import statistics; however, we have excluded imports into India from the United States. See Comment 9.

- *Guanhao minor corrections*—We made the following minor corrections to Guanhao's sales data: (1) We changed the reported gross weight for two observations; and (2) we changed the reported payment date for six observations. See Memorandum entitled, "Verification of the Sales and Factors Responses of Guangdong Guanhao High Tech Co., Ltd. in the Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China," dated July 16, 2008.

- *Hanhong minor corrections*—We made the following minor corrections to Hanhong's sales and factors-of-production ("FOP") data: (1) We changed the reported destination for one observation; (2) we changed the reported per-unit gross weight for

certain observations; and (3) we changed the reported capped distance for certain FOPs. See Memorandum entitled, "Verification of the Sales and Factors Responses of Hanhong International Limited, Shanghai Hanhong Paper Co., Ltd., Hong Kong Hanhong Co., Ltd. in the Antidumping Investigation of Lightweight Thermal Paper from the People's Republic of China," dated July 16, 2008.

### Scope of Investigation

The merchandise covered by this investigation includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m<sup>2</sup>) (with a tolerance of  $\pm 4.0$  g/m<sup>2</sup>) or less; irrespective of dimensions;<sup>1</sup> with or without a base coat<sup>2</sup> on one or both sides; with thermal active coating(s)<sup>3</sup> on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;<sup>4</sup> and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.<sup>5</sup> Although HTSUS subheadings are provided for

<sup>1</sup> LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these investigations.

<sup>2</sup> A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

<sup>3</sup> A thermal active coating is typically made of sensitizer, dye, and co-reactant.

<sup>4</sup> A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

<sup>5</sup> HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a nonsubject product) and 4811.90.8040 (for "other" including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a nonsubject product) and 4811.90.9090 (for "other," including LWTP). Petitioner indicated that, from time to time, LWTP also may have been entered under HTSUS subheading 3703.90, HTSUS heading 4805, and perhaps other subheadings of the HTSUS, including HTSUS subheadings: 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.

convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Surrogate Country

In the *Preliminary Determination*, we stated that we had selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development comparable to that of the PRC; and (3) we have reliable data from India that we can use to value the FOPs. See *Preliminary Determination*. For the final determination, we received and reviewed comments from interested parties; however, we made no changes to our findings with respect to the selection of India as a surrogate country.

### Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Hanhong and Guanhao demonstrated their eligibility for separate-rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Hanhong and Guanhao demonstrate both a *de jure* and *de facto* absence of government control, with respect to their respective exports of the merchandise under investigation, and, thus are eligible for separate-rate status. See Comment 7.

### Facts Available and the PRC-wide Entity

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party: (A) Withholds information requested by the Department, (B) fails to provide such

information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In the *Preliminary Determination*, we determined that two companies, Xiamen Anne Paper Co., Ltd. ("Anne Paper") and Yalong Paper Product (Kunshan) Co., Ltd. ("Yalong"), which did not respond to any of the Department's requests for information, did not cooperate to the best of their ability.<sup>6</sup> As a result, we determined that they failed to demonstrate that they operate free of government control and that they are entitled to a separate rate.<sup>7</sup> Thus, we considered Anne Paper and Yalong to be part of the PRC-wide entity. Because the PRC-wide entity, including Anne Paper and Yalong, did not provide any information, we determined that sections 782(d) and (e) of the Act are not relevant to our analysis. Therefore, in the *Preliminary Determination*, we determined that there were exports of the merchandise subject to this investigation from PRC exporters/producers that did not respond to the Department's shipment questionnaire. Because the PRC-wide entity did not cooperate to the best of its ability in responding to our requests for information, we determined that use of facts available pursuant to section 776(a)(2)(A) and (B) of the Act was

warranted for the PRC-wide entity, which includes Anne Paper and Yalong.<sup>8</sup>

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences.<sup>9</sup> We found that, because the PRC-wide entity did not respond to our request for information, it failed to cooperate to the best of its ability. Therefore, in the *Preliminary Determination*, the Department determined that, in selecting from among the facts available, an adverse inference is appropriate. There have been no changes to the information on the record concerning the PRC-wide entity which includes Anne Paper and Yalong. Therefore, we have made no changes in our analysis for the final determination. Consequently, we determine that the use of adverse facts available ("AFA") for the PRC-wide entity, which includes Anne Paper and Yalong, is warranted for the final determination.

#### Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>10</sup> It is also the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>11</sup>

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be

<sup>8</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006) ("Artist Canvas").

<sup>9</sup> See, e.g., *Artist Canvas*, 71 FR 16116, 16118 (March 30, 2006). See also, Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316 ("SAA") at 870.

<sup>10</sup> See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

<sup>11</sup> See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005); see also, SAA at 870.

appropriate.<sup>12</sup> It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>13</sup> In the instant investigation, as AFA, we have assigned to the PRC-wide entity, including Anne Paper and Yalong, the highest rate on the record of this proceeding, which in this case is the calculated margin for Hanhong. The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

#### Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as "information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation."<sup>14</sup> To "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.<sup>15</sup> Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>16</sup> To corroborate secondary information, the Department will, to the extent practicable, examine

<sup>12</sup> See, e.g., *Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) Unchanged in *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366, (July 6, 2006), and accompanying *Issues and Decision Memorandum* at Comment 10.

<sup>13</sup> See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000), and accompanying *Issues and Decision Memorandum* at "Facts Available."

<sup>14</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479, 6481 (February 4, 2008); see also, SAA at 870.

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>6</sup> See *Preliminary Determination* at 73 FR 27508.

<sup>7</sup> See *Preliminary Determination* at 73 FR 27508.

the reliability and relevance of the information used.<sup>17</sup>

As we did not rely upon secondary information, no corroboration was required under section 776(c) of the Act; rather we used a rate calculated for a respondent in this investigation as the AFA rate for this investigation. <sup>18</sup> See the "Final Determination" section of this notice below.

The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from respondents, Hanhong and Guanhao as they have demonstrated eligibility for a separate rate. These companies and their corresponding antidumping duty cash deposit rates are listed below in the "Final Determination" section of this

notice. Accordingly, we find that the rate of xx.xx percent is corroborated within the meaning of section 776(c) of the Act.

**Combination Rates**

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.<sup>19</sup> This practice is described in the *Separate Rate Policy Bulletin*.<sup>20</sup>

**Adjustment for Export Subsidies**

Consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct U.S. Customs and Border Protection ("CBP")

to require a cash deposit or posting of a bond equal to the amount by which the normal value exceeds the EP, less the amount of the countervailing duty determined to constitute an export subsidy. Accordingly, for cash deposit purposes for Guanhao, we will subtract from the antidumping applicable cash deposit rate that portion of the rate attributable to the export subsidies found in the affirmative countervailing duty determination (*i.e.*, 0.13 percent). After the adjustment for the export subsidies, the resulting cash deposit rate will be 19.64 for Guanhao.

**Final Determination**

The weighted-average dumping margin percentages are as follows:

| Exporter/producer combination   | Percent margin |
|---|----------------|
| Exporter: Shanghai Hanhong Paper Co., Ltd, also known as, Hanhong International Limited ..... | 115.29         |
| Producer: Shanghai Hanhong Paper Co., Ltd..   |                |
| Exporter: Guangdong Guanhao High-Tech Co., Ltd .....  | 19.77          |
| Producer: Guangdong Guanhao High-Tech Co., Ltd.   |                |
| PRC-Wide Entity* .....  | 115.29         |

\* Includes Anne Paper and Yalong.

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all imports of subject merchandise entered or withdrawn from warehouse, for consumption on or after the following dates: (1) For Guanhao and Hanhong, on or after May 13, 2008, the date of publication of the *Preliminary Determination in the Federal Register*, (2) for the PRC-wide entity, on or after May 13, 2008, the date of publication of the *Preliminary Determination in the Federal Register*. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted-average dumping margins shown above. The suspension of liquidation

instructions will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse,

for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 25, 2008.

**Stephen J. Claeys,**  
Acting Assistant Secretary for Import Administration.

**Appendix I—List of Issues**

I. GENERAL ISSUES  
Comment 1: Surrogate Country

*People's Republic of China*, 73 FR 6479 (February 4, 2008).

<sup>19</sup> See *Initiation Notice*, 72 FR at 62435.

<sup>20</sup> See Memorandum entitled "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries" dated April 5, 2005, available at <http://ia.ita.doc.gov/policy/index.html>.

<sup>17</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and*

*Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

<sup>18</sup> See *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the*

- Comment 2: Financial Statements
- Comment 3: Financial Ratios
- Comment 4: New NME Wage Rate
- Comment 5: Zeroing
- Comment 6: Exchange Rates
- II. ISSUES SPECIFIC TO GUANHAO
  - Comment 7: Separate Rate Eligibility
  - Comment 8: Vertical Integration
  - Comment 9: Base Paper Surrogate Value
- III. ISSUES SPECIFIC TO HANHONG
  - Comment 10: Coated Jumbo Rolls Surrogate Value
  - Comment 11: Invoice Date

[FR Doc. E8-23284 Filed 10-1-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-851]

#### Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) has received two requests for new shipper reviews of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). *See Notice of Antidumping Duty order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8310 (February 19, 1999). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.214(d) (2008), we are initiating antidumping duty new shipper reviews of Zhejiang Iceman Group Co., Ltd. (Zhejiang Iceman) and Zhangzhou Gangchang Foods Co., Ltd. (Zhangzhou Gangchang). The period of review (POR) of these new shipper reviews is February 1, 2008, through July 31, 2008.

**DATES:** *Effective Date:* October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-1121 or (202) 482-0649, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 19, 1999, the Department published the antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less*

*Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999). Thus, the antidumping duty order on certain preserved mushrooms has a February anniversary month and a semiannual anniversary month of August. The Department received a request for new shipper reviews from Zhangzhou Gangchang and Zhejiang Iceman on August 29, 2008. *See* August 29, 2008, letter from Zhangzhou Gangchang to the Secretary of Commerce requesting a new shipper review; and August 29, 2008, letter from Zhejiang Iceman to the Secretary of Commerce requesting a new shipper review. Therefore, pursuant to 19 CFR 351.214(d), Zhangzhou Gangchang and Zhejiang Iceman both made their requests during the semiannual anniversary month.

Pursuant to section 751(a)(2)(B)(i) of the Tariff Act and 19 CFR 351.214(b), Zhangzhou Gangchang certified that it is both an exporter and producer of the subject merchandise, and that it did not export subject merchandise to the United States during the period of the investigation (POI) (July 1, 1997, through December 31, 1997). *See* section 751(a)(2)(B)(i)(I) of the Tariff Act and 19 CFR 351.214(b)(2)(i). Likewise, Zhejiang Iceman certified that it is both an exporter and producer of the subject merchandise, and that it did not export subject merchandise to the United States during the POI. *Id.* Pursuant to section 751(a)(2)(B)(i)(II) of the Tariff Act and 19 CFR 351.214(b)(2)(iii)(A), Zhangzhou Gangchang and Zhejiang Iceman both certified that since the investigation was initiated, they have not been affiliated with any producer or exporter who exported the subject merchandise to the United States during the POI. Because these new shipper reviews involve imports from a non-market economy country, in accordance with 19 CFR 351.214(b)(2)(iii)(B), Zhangzhou Gangchang and Zhejiang Iceman also certified that their export activities are not controlled by the central government. Pursuant to 19 CFR 351.214(b)(2)(iv), Zhangzhou Gangchang and Zhejiang Iceman also submitted documentation establishing the date on which they first shipped the subject merchandise to the United States, the volume of that shipment, and the date of their first sale to an unaffiliated customer in the United States. Zhangzhou Gangchang and Zhejiang Iceman also certified they had no shipments to the United States during the period subsequent to their first shipments.

The Department conducted a Customs database query in an attempt to confirm

that Zhangzhou Gangchang's and Zhejiang Iceman's shipments of subject merchandise entered the United States for consumption and that liquidation of such entries had been suspended for antidumping duties. *See* September 26, 2008, Zhangzhou Gangchang New Shipper Review Initiation Checklist, question 18; and Zhejiang Iceman New Shipper Review Initiation Checklist, question 18. The Department also examined whether U.S. Customs and Border Protection (CBP) confirmed that such entries were made during the new shipper review POR.

#### Initiation of Review

Based on information on the record and in accordance with section 751(a)(2)(B) of the Act and section 351.214(d) of the Department's regulations, we find that the requests Zhangzhou Gangchang and Zhejiang Iceman submitted meet the statutory and regulatory requirements for initiation of a new shipper review. Accordingly, we are initiating new shipper reviews of the antidumping duty order on certain preserved mushrooms from the People's Republic of China manufactured and exported by Zhangzhou Gangchang and Zhejiang Iceman. These reviews cover the period February 1, 2008 through July 31, 2008. We intend to issue the preliminary results of these reviews no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(h)(i).

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Accordingly, we will issue questionnaires to Zhangzhou Gangchang and Zhejiang Iceman, each of which will include a separate rates section. These reviews will proceed if the responses provide sufficient indication that Zhangzhou Gangchang and Zhejiang Iceman are not subject to either *de jure* or *de facto* government control with respect to its exports of preserved mushrooms. However, if either Zhangzhou Gangchang or Zhejiang Iceman do not demonstrate eligibility for a separate rates, then the respective company will be deemed not separate

from other companies that exported during the POI and the new shipper review will be rescinded as to the company.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of certain preserved mushrooms manufactured and exported by Zhangzhou Gangchang and Zhejiang Iceman must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise (*i.e.*, certain preserved mushrooms) at the current PRC-wide rate of 198.63 percent.

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are issued and published in accordance with section 751(a)(2)(B) of the Act and sections 351.214 and 351.221(c)(1)(i) of the Department's regulations.

Dated: September 26, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-23267 Filed 10-1-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-884]

#### **Certain Color Television Receivers From the People's Republic of China: Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from petitioner Five Rivers Electronic Innovations, LLC, ("Five Rivers" or "petitioner"), the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on certain color television receivers ("CTVs") from the People's Republic of China ("PRC"). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 44220 (July 30, 2008). This

administrative review covers the June 1, 2007, through May 31, 2008 period of review ("POR"). Due to the withdrawal of the request for the administrative review by Five Rivers for all companies for which it requested a review, we are now rescinding this review, pursuant to 19 CFR 351.213(d)(1).

**DATES:** *Effective Date:* October 2, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Karine Gziryan or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4081 or (202) 482-3147, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 25, 2004, the Department published in the **Federal Register** the amended antidumping duty order on certain color television receivers from the PRC. See *Notice of Amended Antidumping Duty Order: Certain Color Television Receivers from the People's Republic of China*, 69 FR 35583 (June 25, 2004) ("Order"). On June 9, 2008, the Department published a notice of "Opportunity to Request an Administrative Review" of the Order for the POR. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 32557, 32558 (June 9, 2008). On June 26, 2008, the petitioner requested that the Department conduct an administrative review of sales of merchandise by the following 13 companies: Haier Electric Appliances International Co., Hisense Import and Export Co., Ltd., Konka Group Company, Ltd., Philips Consumer Electronics Co. of Suzhou Ltd., Shenzhen Chaungwei-RGB Electronics Co., Ltd., Sichuan Changhong Electric Co., Ltd., Starlight International Holdings, Ltd., Star Light Electronics Co., Ltd., Star Fair Electronics Co., Ltd., Starlight Marketing Development Ltd., SVA Group Co., Ltd., TCL Holding Company Ltd., and Xiamen Overseas Chinese Electronic Co., Ltd. In response to this request, the Department published the initiation of the antidumping duty administrative review on certain color television receivers from the PRC on July 30, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 44220, 44221 (July 30, 2008). No other party requested a review.

On August 18, 2008, TCL Multimedia Technology Holdings Ltd., a PRC producer of subject merchandise, and its wholly-owned U.S. subsidiary, TTE Technology, Inc., a U.S. importer of subject merchandise, (collectively, "TCL"), submitted a letter in which it claimed that the subject merchandise it entered for consumption during the review period was re-exported to Canada and not sold within the United States to unaffiliated customers. For this reason, it requested that the Department rescind the review with respect to TCL and liquidate TCL's entries during the review period without regard to antidumping duties. TCL repeated its request on September 23, 2008.

On August 21, 2008, Xiamen Overseas Chinese Electronic Co., Ltd. ("Xiamen") provided a submission in which it alleged that this administrative review should be terminated because the review request was not made by a domestic interested party as required by the Department's regulations. According to Xiamen, the petitioner filed for bankruptcy in October 2004, and has not produced CTVs in the United States in nearly two years. Since the petitioner did not produce CTVs during the review period, Xiamen argued that it is not entitled to request an administrative review of this order.

On September 17, 2008, petitioner withdrew its request of review of all companies for which it requested review.

#### **Rescission of the Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. Petitioner withdrew its requests for review for all companies within the 90-day time limit. No other company had requested a review of these or any other companies. Therefore, in response to the withdrawal of requests for administrative reviews by petitioner, the Department hereby rescinds the administrative review of the antidumping duty order on certain color television receivers from the PRC for the period June 1, 2007, through May 31, 2008, for all 13 companies listed above. For companies that have a separate rate, the Department intends to issue assessment instructions to the U.S. Customs and Border Protection ("CBP") 15 days after the date of publication of this notice. Since this is a full rescission of the administrative review, we will also issue liquidation instructions for

the PRC-wide entity to CBP 15 days after the date of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 26, 2008.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E8-23272 Filed 10-1-08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 080626787-81262-05]

RIN 0648-ZB96

#### Availability of Grants Funds for Fiscal Year 2009

**AGENCY:** National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce

**ACTION:** Notice

**SUMMARY:** The National Oceanic and Atmospheric Administration, National Ocean Service, publishes this notice on the Modeling the Causes of Hypoxia component of the Northern Gulf of Mexico program to extend the original proposal due date.

**DATES:** The new deadline for the receipt of proposals is 3 p.m. EST, November 20, 2008, for both electronic and paper applications.

**ADDRESSES:** The address for submitting proposals electronically is: <http://www.grants.gov/>. (Electronic submission is strongly encouraged). Paper submissions should be sent to the attention of, Center for Sponsored Coastal Ocean Research (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8240, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Libby Jewett, ([libby.jewett@noaa.gov](mailto:libby.jewett@noaa.gov), 301-713-3338 x 121).

**SUPPLEMENTARY INFORMATION:** This program was originally solicited in the **Federal Register** on July 11, 2008, as part of the July 2008 NOAA Omnibus solicitation. The original deadline for receipt of proposals was 3 p.m., EST, on October 20, 2008. NOAA is extending the solicitation period to provide the public more time to submit proposals. The new deadline for the receipt of proposals is November 20, 2008, for both electronic and paper applications. All other requirements for this solicitation remain the same.

#### Award Notices

The notice of award is signed by the NOAA Grants Officer and is the authorizing document. It is provided by postal mail or electronically through the Grants Online system to the appropriate business office of the recipient organization.

#### Administrative and National Policy Requirements

*The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

#### Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

#### National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, [http://www.nepa.noaa.gov/NAO216\\_6\\_TOC.pdf](http://www.nepa.noaa.gov/NAO216_6_TOC.pdf), and the Council on Environmental Quality implementation regulations, [http://ceq.eh.doe.gov/nepa/regs/ceq/toc\\_mceq.htm](http://ceq.eh.doe.gov/nepa/regs/ceq/toc_mceq.htm). Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide

detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems).

In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

In conformance with the Uniform Administrative Requirements for Grants and Cooperative Agreements section 15 CFR 14.36, any data collected in projects supported by NCCOS/CSCOR should be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NDC, and the Program Officer. Information on NOAA NDCs can be found at <http://www.nesdis.noaa.gov/datainfo.html>. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR are encouraged to be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC).

#### Reporting

All performance (i.e. technical progress) reports shall be submitted electronically through the Grants Online system unless the recipient does not have internet access. In that case, performance reports are to be submitted to the NOAA program manager. All financial reports shall be submitted in the same manner.

#### Agency Contacts

*Technical Information:* Libby Jewett, Program Manager, 301-713-3338/ext 121, Internet: [libby.jewett@noaa.gov](mailto:libby.jewett@noaa.gov)

*Business Management Information:*  
Laurie Golden, NCCOS/CSCOR Grants  
Administrator, 301-713-3338/ext 151,  
Internet: [laurie.golden@noaa.gov](mailto:laurie.golden@noaa.gov).

#### Other Information

##### *Administrative Procedure Act*

Notice and comment are not required under the Administrative Procedure Act, (5 U.S.C. 553), or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment is not required, a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, (5 U.S.C. 601 *et seq.*).

##### *Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number. This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348-0043, 0348-0044, 0348-0040 and 0348-0046, respectively.

Dated: September 24, 2008.

##### **John Potts,**

*Chief Financial Officer, National Oceanic and Atmospheric Administration, National Ocean Service.*

[FR Doc. E8-23279 Filed 10-1-08; 8:45 am]

BILLING CODE 3510-JS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or sanctuary) is seeking applicants for both primary and alternate members of the following seats on its Sanctuary Advisory Council (council): Business/Commerce, Citizen-

At-Large, Commercial Shipping, Conservation, Ocean Recreation, Tourism, and Whale Watching. The HIHWNMS is also seeking applicants for alternate members of the Native Hawaiian seat and the Fishing seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat 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. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter with the exception of the Native Hawaiian and Fishing seat alternates who will serve 1-yr terms.

**DATES:** Applications are due by November 15, 2008.

**ADDRESSES:** Application kits may be obtained from Christine Brammer, 6600 Kalaniana'ole Hwy., Suite 301, Honolulu, HI 96825 or [Christine.Brammer@noaa.gov](mailto:Christine.Brammer@noaa.gov). Completed applications should be sent to the same address. Applications are also available online at <http://hawaiihumpbackwhale.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Naomi McIntosh, 6600 Kalaniana'ole Hwy., Suite 301, Honolulu, HI 96825 or [Naomi.McIntosh@noaa.gov](mailto:Naomi.McIntosh@noaa.gov) or 808.397.2651.

**SUPPLEMENTARY INFORMATION:** The HIHWNMS Advisory Council was established in March 1996 to assure continued public participation in the management of the sanctuary. Since its establishment, the council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The council's 17 voting members represent a variety of local user groups, as well as the general public.

The council is supported by three committees: A Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The 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 humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the sanctuary management and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The council works in concert with the sanctuary management by keeping him or her informed about issues of concern throughout the sanctuary, offering recommendations on specific issues, and aiding in achieving the goals of the sanctuary within the context of Hawai'i's marine programs and policies.

**Authority:** 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: September 22, 2008.

##### **Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. E8-22888 Filed 10-1-08; 8:45 am]

BILLING CODE 3510-NK-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648-XK84**

#### 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) is scheduling a public meeting of its Research Steering Committee (Committee), in October, 2008, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Thursday, October 16, 2008, at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the The Westin, 70 Third Street, Waltham, MA 02451; telephone: (781) 290-5600; fax: (781) 890-5959.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The Council's Research Steering Committee (RSC) will address a range of issues including, a briefing on the status of NMFS's Cooperative Research Program activities and funding for cooperative research. The RSC also will discuss outstanding issues related to the Council's research set-aside programs and review the preliminary list of the NEFMC's five-year Council research priorities. The committee will discuss the use of a workshop format to address RSC management reviews as well as re-examine and possibly revise the evaluation criteria for final cooperative research projects subject to the RSC management review. Finally, the committee will review outstanding cooperative research project final reports. The RSC may consider other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically 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 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, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: September 29, 2008.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E8-23265 Filed 10-1-08; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### National Medal of Technology and Innovation Nomination Application

**ACTION:** New collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to

comment on this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 1, 2008.

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

- *E-mail:* Susan.Fawcett@uspto.gov.

Include "0651-00xx NMTI collection comment" in the subject line of the message.

- *Fax:* 571-273-0112, marked to the attention of Susan K. Fawcett.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to the attention of Jennifer Lo, Program Manager, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-7640; or by e-mail at [nmti@uspto.gov](mailto:nmti@uspto.gov) with "Paperwork" in the subject line.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The Competes Act of 2007 abolished the Technology Administration of the Department of Commerce as of August 9, 2007 (sec. 3002). The administration and nomination processing for the National Medal of Technology has been officially transferred by the Commerce Secretary to the United States Patent and Trademark Office (USPTO).

The USPTO is requesting the approval of the new version of the former Technology Administration's nomination form to be officially incorporated into the USPTO information collection inventory.

The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. Established by an Act of Congress in 1980, the Medal of Technology was first awarded in 1985. The Medal is given annually to individuals, teams, and/or companies/divisions for their outstanding contributions to the Nation's economic, environmental and social well-being through the development and commercialization of technology products, processes and concepts, technological innovation, and development of the Nation's technological manpower.

The purpose of the National Medal of Technology is to recognize those who have made lasting contributions to America's competitiveness, standard of living, and quality of life through technological innovation, and to recognize those who have made substantial contributions to strengthening the Nation's technological workforce. By highlighting the national importance of technological innovation, the Medal also seeks to inspire future generations of Americans to prepare for and pursue technical careers to keep America at the forefront of global technology and economic leadership.

The National Medal of Technology and Innovation Nomination Evaluation Committee, a distinguished, independent committee appointed by the Secretary of Commerce, reviews and evaluates the merit of all candidates nominated through an open, competitive solicitation process. The committee makes its recommendations for Medal candidates to the Secretary of Commerce, who in turn makes recommendations to the President for final selection. The National Medal of Technology and Innovation Laureates are announced by the White House and the Department of Commerce once the Medalists are notified of their selection.

The public uses the National Medal of Technology and Innovation Nomination Application to recognize through nomination an individual's or company's extraordinary leadership and innovation in technological achievement. The application must be accompanied by six letters of recommendation or support from individuals who have first-hand knowledge of the cited achievement(s).

##### II. Method of Collection

The nomination application and instructions can be downloaded from the USPTO Web site. Nomination files should be submitted by electronic mail. Alternatively, letters of recommendation may be sent by electronic mail, fax or overnight delivery.

##### III. Data

*OMB Number:* 0651-00xx.

*Form Number(s):* None.

*Type of Review:* New information collection.

*Affected Public:* Primarily business or other for-profit organizations; not-for-profit institutions; individuals or households.

*Estimated Number of Respondents:* 26 responses per year.

*Estimated Time Per Response:* The USPTO estimates that it will take approximately 40 hours to gather the necessary information, prepare the

nomination form, write the recommendations, and submit the request for the nomination to the USPTO. This collection contains one form.

*Estimated Total Annual Respondent Burden Hours: 1,040 hours per year.*

*Estimated Total Annual Respondent Cost Burden: \$36,067. The USPTO is*

calculating an estimated respondent hourly rate through an estimate of earnings obtained from the Bureau of Labor Statistics, Occupational Outlook Handbook, 2008–09 edition. The USPTO estimates that half of the submissions will be filed by public relations specialists and half by research

engineers. The USPTO estimates that it will cost public relations specialists \$23.68 per hour and research engineers \$45.68 per hour, for an average hourly rate of \$34.68. Considering these factors, the USPTO estimates \$36,067 per year for labor costs associated with respondents.

| Item  | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|-----------------------------|----------------------------|-------------------------------|
| National Medal of Technology and Innovation Nomination Form ..... | 40 hours                    | 26                         | 1,040                         |
| Total .....   | .....                       | 26                         | 1,040                         |

*Estimated Total Annual (Non-hour) Respondent Cost Burden: \$0.*

There are no capital start-up, operation, maintenance or record keeping costs associated with this information collection, and there are no filing fees.

Although it is possible for the public to submit the nominations through regular or express mail, to date no submissions have been received in this manner. The majority of recent submissions have been through electronic mail. The USPTO, therefore, is not calculating an estimate of postage costs associated with this information collection.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: September 25, 2008.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.*

[FR Doc. E8–23180 Filed 10–1–08; 8:45 am]

**BILLING CODE 3510–16–P**

**COMMODITY FUTURES TRADING COMMISSION**

**Agency Information Collection Activities: Notification of Pending Legal Proceedings Pursuant to Regulation**

**AGENCY:** Commodity Futures trading commission.

**ACTION:** Renewal of an existing collection—3038–0033.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the rule requiring notification of pending legal proceedings pursuant to 17 CFR 1.60.

**DATES:** Comments must be submitted on or before December 1, 2008.

**ADDRESSES:** Comments may be mailed to Lynn A. Bulan, Office of the General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lynn A. Bulan, (202) 418–5143; FAX: (202) 418–5567; e-mail: [lbulan@cftc.gov](mailto:lbulan@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the

public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

**Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60, OMB Control Number 3038–0033—Extension**

The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise.

The Commission's rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information

contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. In addition, the Commission's rules impose obligations on contract markets that are designed to avoid manipulation and fraud. In order

to ensure compliance with these rules, the Commission requires the information whose collection and dissemination is required under 17 CFR 1.60.

The Commission estimates the burden of this collection of information as follows:

## ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Total annual responses | Hours per response | Total hours |
|----------------|------------------------------|------------------------|--------------------|-------------|
| 1.60 .....     | 235                          | 1                      | .10                | .10         |

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 26, 2008.

**David Stawick,**

*Secretary of the Commission.*

[FR Doc. E8-23220 Filed 10-1-08; 8:45 am]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Wednesday, October 29, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Staff Assistant.*

[FR Doc. E8-23418 Filed 9-30-08; 4:15 pm]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday, October 24, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Staff Assistant.*

[FR Doc. E8-23419 Filed 9-30-08; 4:15 pm]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

##### AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission

**TIME AND DATE:** 11 a.m., Friday, October 17, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Staff Assistant.*

[FR Doc. E8-23420 Filed 9-30-08; 4:15 pm]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

##### AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission

**TIME AND DATE:** 11 a.m., Friday, October 3, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Staff Assistant.*

[FR Doc. E8-23421 Filed 9-30-08; 4:15 pm]

**BILLING CODE 6351-01-P**

### COMMODITY FUTURES TRADING COMMISSION

#### Sunshine Act Meetings

**TIME AND DATE:** 11 a.m., Friday, October 31, 2008.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**  
*Staff Assistant.*

[FR Doc. E8-23425 Filed 9-30-08; 4:15 pm]

**BILLING CODE 6351-01-P**

### DEPARTMENT OF DEFENSE

#### Department of the Army, Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for the Proposed Ala Wai Canal Project, Honolulu, Oahu, HI

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers (USACE), DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the U.S. Army Corps of Engineers (USACE) and the State of Hawaii Department of Land and Natural Resources (DLNR) gives notice that an Environmental Impact Statement is being prepared for the Ala Wai Canal Project, City and County of Honolulu, HI. This effort is a multi-purpose project being proposed under Section 209 of the Flood Control Act of 1962 (Pub. L. 87-874) and will incorporate both flood hazard reduction and ecosystem

restoration components into a single, comprehensive strategy.

**DATES:** In order to be considered in the Draft EIS (DEIS), comments and suggestions should be received no later than 30 days after publication of this notice in the **Federal Register**.

**ADDRESSES:** Send written comments to U.S. Army Corps of Engineers, Honolulu District, ATTN: Cindy S. Barger, Project Manager, Civil and Public Works Branch (CEPOH-PP-C), Room 311, Building 230, Fort Shafter, HI 96858-5440.

**FOR FURTHER INFORMATION CONTACT:**

Questions or comments concerning the proposed action should be addressed to Ms. Cindy S. Barger, Project Manager, U.S. Army Corps of Engineers, Honolulu District, Civil and Public Works Branch, Building 230, Fort Shafter, HI 96858-5440, Telephone: (808) 438-6940, E-mail:

*Cindy.S.Barger@poh01.usace.army.mil*, or Mr. Carty Chang, Project Planning and Management Branch Chief, State of Hawaii Department of Land and Natural Resources, Engineering Division, 1151 Punchbowl Street, Room 221, Honolulu, HI 96813, telephone (808) 587-0227, E-mail: *carty.s.chang@hawaii.gov*.

**SUPPLEMENTARY INFORMATION:**

A preliminary assessment of this federally funded action indicates that the project may cause significant impacts on the environment. As a result, it has been determined that the preparation and review of an Environmental Impact Statement (EIS) is needed for this project. The EIS and Feasibility Study for the Ala Wai Canal Project are being conducted concurrently. The EIS will evaluate potential impacts to the natural, physical, and human environment as a result of implementing any of the proposed alternatives that are developed by this project.

This project will be implemented under Section 209 of the Flood Control Act of 1962 (Pub. L. 87-874), for the purpose of flood mitigation and ecosystem restoration in the Ala Wai Canal Watershed, which consists of the sub-watersheds of Makiki, Manoa, Palolo, and Waikiki. The USACE will work with the affected community and the sponsoring local organization, the State of Hawaii Department of Land and Natural Resources, to develop an acceptable plan to address the flood and ecosystem problems.

The 11,069-acre Ala Wai Canal Watershed is located in the southern portion of the island of Oahu. The Watershed is highly urbanized, with approximately 1,746 structures within the designated 100-year floodplain. There is a high potential for massive

flood damage to the densely populated and economically critical area of Waikiki and the adjacent neighborhoods of McCully and Moiliili. Additionally, flooding frequently occurs in lower Makiki and recently in the central Manoa Valley, causing damages to businesses, homes, and academic facilities. There is also significant environmental degradation of the streams and waterways, including heavy sedimentation, poor water quality, lack of habitat for native species, and a prevalence of alien species.

Goals of the Ala Wai Canal Project are to (1) Protect the entire Ala Wai Canal Watershed from the 100-year flood event, (2) improve the migratory pathway for native amphidromous species, (3) reduce sediment buildup in the streams and Ala Wai Canal, (4) enhance the physical quality of existing aquatic habitat for native species, and (5) improve water quality. Anticipated significant issues identified to date and to be addressed in the EIS include: (1) Impacts on flooding, (2) impacts on stream hydraulics, (3) impacts on fish and wildlife resources and habitats, (4) impacts on recreation and recreational facilities, and (5) other impacts identified by the Public, agencies, or USACE studies.

A full range of possible programs and actions will be considered in order to meet the project goals. Currently under consideration are dredging, detention basins, flood walls, debris basins and other debris management actions, bridge modification, flood-proofing structures within the flood plain, diversion of flood waters, flood warning systems, widening of channels, acquisition of properties within the floodplain, maintenance easements, and a drainage district. Ecosystem restoration measures currently under consideration include low-flow channels, creating more natural stream channels, constructed wetlands, trash separators, sediment interceptors, daylighting the stream, increasing or decreasing shade as necessary, reducing the pig population, and stream bank stabilization. As hydrologic, hydraulic, and biological analyses are performed and stakeholder consultations are conducted, additional concepts may be developed.

Evaluation of all of the alternatives will take into account minimization of adverse impacts to social resources, economics, aesthetics, recreation, historic and cultural resources, and native species habitat. Flood hazard reduction alternatives will additionally take into account a cost-benefit analysis and ability to complement ecosystem restoration measures. Evaluation of the ecosystem restoration alternatives will

be based on the areas of habitat they create, improve, or provide access to, as well as their ability to complement flood hazard reduction measures.

A DEIS will be prepared and circulated for review by agencies and the public. The USACE and DLNR invite participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the DEIS. The DLNR will be issuing a state-level Environmental Impact Statement Preparation Notice (EISPN) pursuant to Hawaii Revised Statutes (HRS) Chapter 343. All written and verbal comments received in response to this Notice of Intent and the State EISPN will be considered when determining the scope of the EIS. To the extent practicable, NEPA and HRS 343 requirements will be coordinated in the preparation of the EIS document.

A public scoping meeting will be held on Tuesday, October 21, 2008 at the Washington Middle School Cafeteria at 1633 South King Street, Honolulu, HI 96826, from 6:30 p.m. until 8:30 p.m. to determine the scope of analysis of the proposed action. The scoping meeting will also be announced in local media. Interested parties are encouraged to express their views during the scoping process and throughout the development of the alternatives and EIS. To be most helpful, comments should clearly describe specific environmental topics or issues which the commenter believes the document should address. Further information on the proposed action or the scoping meeting may be obtained from Cindy S. Barger, Project Manager, at (see **ADDRESSES**). The DEIS should be available for public review in early 2010, subject to the receipt of federal funding.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E8-23221 Filed 10-1-08; 8:45 am]

**BILLING CODE 3710-NN-P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for the Mississippi River-Gulf Outlet Ecosystem Restoration Feasibility Study

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Corps of Engineers (Corps) intends to prepare an

Environmental Impact Statement (EIS) for the Mississippi River-Gulf Outlet (MRGO) Ecosystem Restoration Feasibility Study within the Middle and Lower Pontchartrain Basin and areas of southern Mississippi. The Corps will evaluate a full range of comprehensive restoration measures to restore important estuarine components and ecosystem processes within the areas affected by the MRGO navigation channel and assess the impacts associated with implementing the plan. The MRGO was authorized by Congress in 1956 as a Federal navigation channel to provide a direct route between the Port of New Orleans and the Gulf of Mexico. Construction began in 1958 and was completed in 1968 to authorized dimensions (36-foot depth by 500-foot width; 38-foot depth by 600-foot bottom width in Bar Channel). Construction of the MRGO channel created a direct deep water link between the Inner Harbor Navigation Canal and the Gulf of Mexico allowing higher salinity waters to enter Lake Borgne and Lake Pontchartrain estuaries. Construction resulted in direct wetland losses, damages to the Bayou LaLoutre Ridge and alteration of the adjacent landscape and hydrology by placement of dredge material adjacent to the channel in upland confined disposal facilities. Since Hurricane Katrina made landfall in 2005, the MRGO navigation channel has not been maintained. A June closure plan and accompanying Legislative EIS and Record of Decision titled "Integrated Final Report to Congress and Legislative Environmental Impact Statement for the Mississippi River-Gulf Outlet Deep-Draft De-Authorization Study" was signed on June 5, 2008, officially deauthorizing the MRGO navigation channel (from the Gulf of Mexico to Mile 60 at the southern bank of the Gulf Intracoastal Waterway) and authorizing construction of a closure structure at the south ridge of Bayou LaLoutre in St. Bernard Parish, Louisiana and development of plan to restore the areas affected by the MRGO Navigation channel.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for scoping meeting dates.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the Draft Environmental Impact Statement (DEIS) should be addressed to Ms. Sandra Stiles at U.S. Army Corps of Engineers, CEMVNP-M-RS, P.O. Box 60267, New Orleans, LA 70160-0267, phone (504) 862-1583, fax number (504) 862-2088 or by e-mail at [sandra.e.stiles@usace.army.mil](mailto:sandra.e.stiles@usace.army.mil).

**SUPPLEMENTARY INFORMATION:**

1. *Authority:* Water Resources Development Act of 2007 Sections 7012 and 7013 authorized the Corps to develop a comprehensive closure and restoration plan, at full Federal expense, to de-authorize deep-draft navigation on the MRGO, Louisiana, extending from the Gulf of Mexico to the Gulf Intracoastal Waterway (GIWW) and develop a restoration plan.

2. *Proposed Action.* The Corps will develop a comprehensive ecosystem restoration plan to restore the areas affected by the MRGO navigation channel to include: (1) Physically modifying the MRGO channel and restoring areas affected by the channel; (2) restoring natural ecosystem features to reduce damage from storm surge; (3) measures preventing saltwater intrusion into the waterway; (4) measures protecting, restoring or increasing wetlands to prevent saltwater intrusion or storm surge; (5) measures reducing risk of storm damage to communities by preventing or reducing wetland losses or restoring wetlands in areas affected by navigation, oil and gas and other manmade channels; (6) diversions to restore the Lake Borgne Ecosystem.

3. *Alternatives.* Restoration measures being considered include physical modification and restoration of the MRGO navigation channel, freshwater, sediment and nutrient introduction; shoreline protection and bank stabilization; restoration and protection of natural ridges; barrier island protection and restoration; wetland protection, creation and restoration; water control measures (gates, weirs, sills, plugs, etc.); measures to increase native vegetation; restoration of natural features to reduce storm surge. Once restoration measures are identified, alternative plans will be developed through various combinations of restoration measures that best meet the study goals and objectives and are determined to be cost-effective, environmentally acceptable and technically feasible. Some measures may also be recommended for implementation under other authorities.

4. *Public Involvement.* Stakeholder and public involvement for this proposed action is integral to the project. Interested parties, concerned citizens, and other State and Federal agencies, private and not-for-profit or non-governmental organizations are strongly encouraged to participate in the development of the proposed action. Stakeholder and public meetings would be held throughout project development. Meeting announcements would be made as information becomes available.

5. *Public Scoping Meeting.* Scoping is the process utilized for determining the range of alternatives and significant issues to be addressed in the EIS. For this study, a letter will be mailed to all parties believed to have an interest in the analysis. The letter will notify interested parties of public scoping meetings that will be held in the local area and request their input on alternatives and issues to be evaluated. Notices will also be mailed to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request inclusion in the study mailing list. A public scoping meeting will be held November 3, 2008 from 6–9 p.m. in Chalmette, Louisiana and November 6, 2008 from 6–9 p.m. in Waveland, Mississippi. The exact location and address for the meetings will be announced through local media channels. Additional meetings could be held, depending upon public interest and if it is determined that further public coordination is warranted.

6. *Significant Issues.* The tentative list of important resources and issues that will be evaluated in the EIS include but are not limited to tidal wetlands (marshes and swamps), barrier islands, aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species and critical habitat, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation; flood protection; business and industrial activity; oil and gas pipelines; employment; land use; property values; public/community facilities and services; tax revenues; population, community and regional growth; transportation; housing; community cohesion; environmental justice, aesthetics and noise.

7. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will assist in documenting existing conditions and assessing effects of project alternatives through the Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted regarding the effects of this proposed action on Essential Fish Habitat. The draft EIS or a notice of its availability will be distributed to all interested

agencies, organizations, and individuals.

8. *Estimated Date of Availability.* The earliest that the DEIS is expected to be available is March of 2010.

Dated: September 23, 2008.

**Alvin B. Lee,**

*Colonel, U.S. Army, District Engineer.*

[FR Doc. E8-23219 Filed 10-1-08; 8:45 am]

**BILLING CODE 3710-84-P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Notice of Closed Meeting of the Chief of Naval Operations Executive Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of the Subcommittee on Africa to the Chief of Naval Operations. The matters to be discussed during the meeting have been divided into the following four categories: threats to U.S. security and interests in Africa; political, economic, and security assessments of key African nations and institutions; U.S. Navy security cooperation and engagement strategies; and a conclusion/summary of the classified discussions.

Each topic under each of these headings is classified either secret or confidential, which makes this information exempt from open meeting disclosure pursuant to 5 U.S.C. Section 552b(c)(1).

**DATES:** The meeting will be held on October 27, 2008, from 9:30 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting will be held at the Center for Naval Analysis Boardroom, 4825 Mark Center Drive, Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** CDR David Di Tallo, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, telephone: 703-681-4908.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Individuals or interested groups interested may submit written statements for consideration by the Chief of Naval Operations Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the Chief of Naval Operations Executive Panel Chairperson, and ensure they are provided to members of the Chief of Naval Operations Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311-1846.

Dated: September 26, 2008.

**T.M. Cruz,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8-23227 Filed 10-1-08; 8:45 am]

**BILLING CODE 3810-FF-P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 1, 2008.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 26, 2008.

**Sheila Carey,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension.

*Title:* Application for Approval to Participate in the Federal Student Financial Aid Programs.

*Frequency:* On Occasion; Prior to expiration of eligibility.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 4,485.

Burden Hours: 21,181.

*Abstract:* The Higher Education Act of 1965 (HEA), as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorized by the HEA. The institution must submit the form (1) initially when it first seeks to become eligible for the Title IV programs; (2) when its program

participation agreement expires (recertification); (3) when it changes ownership, merges, or changes structure; (4) to be reinstated to participate in the Title IV programs; (5) to notify the Department when it makes certain changes, e.g. name or address; and (6) if it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3852. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8-23177 Filed 10-1-08; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC08-510-001, FERC-510]

#### Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

September 26, 2008.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and

should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 13, 2008 (73 FR 13535-13536) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by October 31, 2008.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, *c/o oira\_submission@omb.eop.gov* and include the OMB Control No. (1902-0068) as a point of reference. The Desk Officer may be reached by telephone at 202-395-7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-34, *Attention:* Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08-510-001. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (<http://www.ferc.gov/help/submission-guide/electronic-media.asp>). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact [fercolinesupport@ferc.gov](mailto:fercolinesupport@ferc.gov) or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502-8415, by fax at

(202) 273-0873, and by e-mail at [michael.miller@ferc.gov](mailto:michael.miller@ferc.gov).

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC-510 "Application for Surrender of Hydropower License" (OMB No. 1902-0068) is used by the Commission to implement the statutory provisions of sections 4(e), 6 and 13 of the Federal Power Act (FPA) 16 U.S.C. sections 797(e), 799 and 806. Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmissions lines or other power project works necessary or convenient for developing and improving navigation, transmissions and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC-510 is in the form of a written application for surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for Surrender of a License. The order is the result of an analysis of the information produced, i.e., economic, environmental concerns, etc., which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CRF 6.1-6.4.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|--------------------------------|------------------------------------|-----------------------------------|---------------------------|
| (1)                            | (2)                                | (3)                               | (1) × (2) × (3)           |
| 8                              | 1                                  | 10                                | 80                        |

Estimated cost burden to respondents is \$4,861.00. (80 hours/2080 hours per year times \$126,384 per year average per employee = \$4,861.00). The cost per respondent is \$608.00.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including 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.

**Nathaniel J. Davis, Sr.**,  
Deputy Secretary.  
[FR Doc. E8-23213 Filed 10-1-08; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. IC08-583-001, FERC-583]

**Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review**

September 26, 2008.  
**AGENCY:** Federal Energy Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 26, 2008 (FR Vol. 73, No. 38 10235-10236) and has made this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by October 31, 2008.

**ADDRESSES:** Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, *c/o oira\_submission@omb.eop.gov* and include the OMB Control No. (1902-0136) as a point of reference. The Desk Officer may be reached by telephone at 202-395-7345. A copy of the comments should also be sent to the Federal

Energy Regulatory Commission, Office of the Executive Director, ED-34, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08-583-001. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at (<http://www.ferc.gov/help/submission-guide/electronic-media.asp>). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at *michael.miller@ferc.gov*.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC-583 "Annual Kilowatt Generating Report (Annual Charges)" (OMB No. 1902-0136) is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA), part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, the

Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to “assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.” The information is collected annually and used to

determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

|           | Number of respondents annually<br>(1) | Number of responses per respondent<br>(2) | Average burden hours per response<br>(3) | Total annual burden hours<br>(1) × (2) × (3) |
|-----------|---------------------------------------|---|--|--|
| 599 ..... |                                       | 1   | 2  | 1,198 h                                      |

Estimated cost burden to respondents is \$72,792. (1,198 hours/2,080 hours per year times \$126,384 per year average per empl oye = \$72,792). The cost per respondent is \$122 (rounded off).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing, the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 those who are to respond, including 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.

**Kimberly Bose,**  
*Secretary.*

[FR Doc. E8-23214 Filed 10-1-08; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. CP08-473-000]

**BreitBurn Operating, L.P.; Notice of Application**

September 26, 2008.

Take notice that on September 18, 2008, BreitBurn Operating, L.P. (Breitburn), 515 South Flower Street, Suite 4800, Los Angeles, CA 90071, filed with the Commission an application pursuant to sections 157 of the Commission's regulations under the Natural Gas Act (NGA) seeking a limited jurisdiction transportation certificate, a waiver of certain filing, reporting, and other regulatory requirements otherwise applicable to an interstate pipeline owner and operator, and a blanket construction certificate to perform certain routine activities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Copies of this filing are available for review at the Commission's Washington, DC offices, or may be viewed on the Web at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at

[FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this application should be directed to Gregory C. Brown, Executive Vice President and General Counsel, BreitBurn Management Company, LLC, 515 South Flower Street, Suite 4800, Los Angeles, CA 97001, phone (213) 225-5900, e-mail [gbrown@breitburn.com](mailto:gbrown@breitburn.com).

There are two ways to become involved in the Commission's review of this application. First, any person wishing to obtain legal status by becoming a party to this proceeding should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to the project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's

rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-Filing" link. 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.

*Comment Date:* October 17, 2008.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-23211 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. CP07-62-000; CP07-63-000]

#### **AES Sparrows Point LNG, LLC, Mid-Atlantic Express, L.L.C.; Notice of Availability of the Draft General Conformity Determination and Notice of Public Comment for the Proposed Sparrows Point LNG Project**

September 26, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Draft General Conformity Determination to assess the potential air quality impacts associated with the construction and operation of a liquefied natural gas (LNG) import terminal and natural gas pipeline proposed by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC, collectively referred to as AES, in the dockets referenced below.

This Draft General Conformity Determination was prepared to satisfy the requirements of the Clean Air Act.

#### **Comment Procedures**

Any person wishing to comment on this Draft General Conformity Determination may do so. To ensure consideration of your comments in the Final General Conformity Determination, it is important that we receive your comments before the date specified below. For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers

Docket No. CP07-62-000 and CP07-63-000 with your submission. The docket number can be found on the front of this notice. The Commission strongly encourages electronic filing of any comments on this Draft General Conformity Determination and has dedicated eFiling expert staff available to assist you at 202-502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

1. You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

2. You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to Documents and Filings. FERC's eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

3. You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Reference Docket Nos. CP07-62-000 and CP07-63-000 on the original and both copies;
- Label one copy of your comments for the attention of Gas Branch 2; PJ11.2; and
- Mail your comments so that they will be received in Washington, DC on or before November 3, 2008.

After all comments are reviewed, the staff will publish and distribute a Final General Conformity Determination for the Project.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-23217 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EG08-75-000; EG08-76-000; FC08-6-000; FC08-7-000; FC08-8-000; FC08-9-000]

#### **Notrees Windpower, LP; Windthorst-1, LLC; SunEdison International, LLC; P.P.C. Limited; Atlantic Equipment & Power (Turks and Caicos) Ltd.; Belize Electric Company Limited; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status**

September 26, 2008.

Take notice that during the month of August 2008, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-23212 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 4306-017—Minnesota]

#### **City of Hastings; Notice of Availability of Environmental Assessment**

September 26, 2008.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 380), the Office of Energy Projects has prepared an environmental assessment (EA) regarding the City of Hastings' (City's) request to install two hydrokinetic turbines at the Mississippi Lock and Dam No. 2 Hydroelectric Project. The project is located on the Mississippi River in Dakota County, Minnesota. This EA concludes that the Proposed Action, with staff's recommended mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Room of the Commission's offices at 888 First Street NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site ([www.ferc.gov](http://www.ferc.gov)) using the "eLibrary" link. Enter the docket number "P-4306"

in the docket number field to access the document. For assistance with eLibrary, contact [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free at (866) 208-3372, or for TTY contact (202) 502-8659.

For further information regarding this notice, please contact Andrea Claros at (202) 502-8171 or by e-mail at [andrea.claros@ferc.gov](mailto:andrea.claros@ferc.gov).

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-23215 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[FERC Docket No. PF08-9-000]

#### **Ruby Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement and Land and Resource Management Plan Amendment for the Proposed Ruby Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings**

September 26, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Ruby Pipeline, L.L.C.'s (Ruby) proposed Ruby Pipeline Project in Wyoming, Utah, Nevada, and Oregon. The project facilities would consist of about 677 miles of 42-inch-diameter natural gas pipeline, four new compressor stations, and related facilities as described below. The EIS will be used by the Commission in its decision-making process to determine if the project is in the public convenience and necessity.

This notice explains the scoping process that is being used to gather input from the public and interested agencies on the project. Your input will help determine the issues that need to be evaluated in the EIS. Please note that this scoping period will close on October 29, 2008.

Comments may be submitted in writing or verbally. Details on how to submit written comments are provided in the "Public Participation" section of this notice. In lieu of or in addition to sending written comments, you are invited to attend any of the four public scoping meetings to verbally comment on the project. The dates and locations of the meetings are listed below and will be posted on the Commission's calendar at <http://www.ferc.gov/EventCalendar/>

*EventsList.aspx*. All meetings are scheduled to begin at 7 p.m. in the time zone in which they are being held.

October 14, 2008—Montpelier, Idaho, Oregon-California Trail Center, 320 N 4th Street, (208) 847-3800.

October 15, 2008—Hyrum, Utah, Civic Center, 83 W Main Street, (435) 245-6033.

October 16, 2008—Brigham City, Utah, Brigham City Senior Center, 24 N 300 W, (435) 723-3303.

October 22, 2008—Lakeview, Oregon, Elks Lodge, 323 N. F Street, (541) 947-2258.

If a significant number of people are interested in commenting at the meetings, each commenter will be limited to a three to five minute comment period to ensure that all people wishing to comment have the opportunity in the time allotted for the meeting. If time limits on comments are implemented, they will be strictly enforced.

The Ruby Pipeline Project is currently in the "Pre-filing" stage and at this time a formal application has not been filed with the Commission. For this proposal, the Commission is initiating its National Environmental Policy Act (NEPA) review prior to receiving the application. The Commission's Pre-filing Process allows interested stakeholders to become involved early in the project planning with the intent of identifying and resolving issues before a formal application is filed with the FERC.<sup>1</sup> A docket number (PF08-9-000) has been established to place information filed by Ruby and related documents issued or received by the Commission into the public record. Once a formal application is filed with the FERC, a new docket number will be established.

The FERC is the lead federal agency for the preparation of the EIS. The U.S. Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS because the project would cross federally administered lands in Wyoming, Utah, Nevada, and Oregon. The U.S. Forest Service (USFS) also is participating as a cooperating agency because the project would cross the Wasatch-Cache and Fremont-Winema National Forests in Utah and Oregon, respectively.

As a cooperating agency, the BLM intends to adopt the EIS per Title 40 of the Code of Federal Regulations, Part 1506.3, to meet its NEPA responsibilities for Ruby's application for a Right-of-Way Grant and Temporary

Use Permit for crossing federally administered lands, including the Wasatch-Cache and Fremont-Winema National Forests. The concurrence or non-concurrence of the USFS would be considered in the BLM's decision as well as impacts on resources and programs and the project's conformance with land use plans.

As proposed, the Ruby Pipeline Project does not follow a designated utility corridor through the Wasatch-Cache National Forest; therefore, if Ruby's proposed route were authorized, the *Wasatch-Cache National Forest Revised Land and Resource Management Plan* (2003) (Forest Plan) would need to be amended. The USFS will use the EIS to consider amending the Forest Plan to allow pipeline construction outside of designated utility corridors.

With this notice, we<sup>2</sup> are asking other federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Ruby's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing written comments described later in this notice and describe the extent to which they would like to be involved as a cooperating agency. We also encourage government representatives to notify their constituents of this project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, Ruby and the affected landowners should seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain for securing easements for the facilities. Therefore, if easement negotiations fail to produce an agreement, Ruby could initiate condemnation proceedings in accordance with state law.

This notice is being sent to potentially affected landowners crossed by and adjacent to the project route; landowners within 0.5 mile of proposed compressor station sites; federal, state, and local government agencies; elected

<sup>1</sup> This notice announces the second scoping period the Commission has opened for the Ruby Pipeline Project. See page 5 for details.

<sup>2</sup> "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties.

This notice is also being sent to landowners within 0.5 mile of Ruby's currently planned pipeline route and 0.5 mile of an alternative route previously considered by Ruby. Both routes are shown on the map in appendix 1. We included these landowners on our original mailing list and scoping effort for the project because the initial route location proposed by Ruby was very general and had potential to directly affect a wider range of landowners as the route became more refined. Thus, some recipients of this notice may not be directly affected by the Ruby Pipeline Project. Although we have retained these landowners for this mailing, please note that recipients of this notice who do not comment on the proposed project and want to remain on the list for future mailings must return the Mailing List Retention Form (see the section "Environmental Mailing List" on page 9 and also appendix 2 for details on how to remain on the mailing list).

To assist potentially affected landowners, a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the potential use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

### Summary of the Proposed Project

Ruby is proposing to construct a new pipeline system to transport natural gas from the Rocky Mountain region to the northwestern United States. Specifically, Ruby is proposing to construct:

- About 674 miles of 42-inch-diameter pipeline from the Opal Hub in Lincoln County, Wyoming to the Malin Market Center in Klamath County, Oregon;
- About 3 miles of 42-inch-diameter lateral<sup>3</sup> pipeline in Klamath County, Oregon;
- 4 new compressor stations;
- 4 measurement stations;<sup>4</sup>
- 42 mainline block valves; and
- 14 pig<sup>5</sup> launcher and 13 pig receiver facilities.

<sup>3</sup> A lateral is a short pipeline that takes natural gas from the main pipeline system to a customer, such as a local distribution company or another natural gas pipeline system.

<sup>4</sup> The 4 measurement stations would house a total of 10 receipt and/or delivery points.

<sup>5</sup> A pipeline "pig" is a device designed to internally clean or inspect the pipeline. A pig

A map depicting the general location of project facilities is included as appendix 1.<sup>6</sup> Ruby originally considered a northern route on the eastern end of the pipeline as illustrated on the general location map. Based on additional study and agency consultations, Ruby no longer prefers the northern route. We are, however, including it in our evaluation as a possible alternative along with other possible alternatives.

The project, if completed, would have the capacity for transporting approximately 1.3 to 1.5 billion cubic feet of natural gas per day. Ruby anticipates filing its formal application with the FERC in January 2009. Ruby is proposing to start construction of the project in the first or second quarter of 2010, with the goal of placing the proposed pipeline in service in the first quarter of 2011.

### Land Requirements for Construction

Ruby is proposing to use a nominal 115-foot-wide construction right-of-way for the project. Additional work areas would be required where the pipeline crosses certain features (e.g., waterbodies, wetlands, steep slopes, roads, and railroads); for staging areas, pipe yards, and contractor's yards; and for widening certain roads for project access.

Based on preliminary information, we estimate that construction of the Ruby Pipeline Project would disturb about 12,000 acres of land. Of the 12,000 acres, about 4,300 acres would be retained after construction as a 50-foot-wide permanent right-of-way and as aboveground facility sites. All temporary work areas would be restored and allowed to revert to former use after construction.

### The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public has about proposals. This is the "scoping" process referred to earlier.

launcher/receiver is an aboveground facility where pigs are inserted into or retrieved from the pipeline.

<sup>6</sup> Appendix 1 (General Project Map) and appendix 2 (Mailing List Retention Form) are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (<http://www.ferc.gov>) at the "eLibrary" link or from the Commission's Public Reference Room at (202) 502-8371. For instructions on connecting to eLibrary, refer to the "Availability of Additional Information" section at the end of this notice. The General Project Map and Mailing List Retention Form were sent to all those receiving this notice in the mail.

The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. All comments received during a scoping period are considered in the preparation of an EIS.

As a part of the Commission's Pre-filing Process, FERC and cooperating agency staff have already started to meet with Ruby, jurisdictional agencies, and other interested stakeholders to discuss the project and identify issues/impacts and concerns. FERC and BLM staff participated in eight public open house meetings hosted by Ruby in February and March 2008. In addition, on March 28, 2008, the FERC issued a *Notice of Pre-Filing Environmental Review for the Ruby Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*. Issuance of that notice opened an initial time period for providing comments on the project and announced the six public scoping meetings held in April 2008.

By this notice, we are formally announcing the preparation of the EIS and are requesting additional agency and public comments to help focus the analysis in the EIS on the potentially significant environmental issues/impacts related to the project. Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; commentors; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 45-day comment period will be allotted for public review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. We will consider all comments on the final EIS before we make our recommendations to the Commission. To ensure that your comments are considered, please follow the instructions in the "Public Participation" section of this notice.

### Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of construction and operation of the Ruby Pipeline Project. We have already identified a number of issues and alternatives that we think deserve attention based on the initial public scoping period and our review of the information provided by Ruby. This preliminary list of potential issues and alternatives may be changed based on your comments and our analysis.

*Geology, Soils, and Reclamation:*

- Impacts on current and future mining operations, including gold mines near Elko and Winnemucca, Nevada.
- Potential for seismic activity to affect the integrity of the pipeline.
- Potential for reduced soil fertility due to topsoil and subsoil mixing.
- Construction limitations and erosion potential in steep terrain.
- Potential for problematic reclamation due to poor soils, arid conditions, and potential grazing after restoration has occurred.
- Potential for invasion or spread of undesirable vegetation and noxious weeds during and after construction.

*Water Resources and Wetlands:*

- Potential effects on groundwater resources and springs.
- Effects of construction on waterbodies and agricultural canals.
- Impacts on wetlands, including wetlands in the Wetland Reserve Program.

*Fish, Wildlife, Vegetation, and Sensitive Species:*

- Effects of project construction and timing on fish and wildlife and their habitat, including state-listed threatened and endangered species, migratory birds, and big game species.
- Effects of water depletion from hydrostatic test water withdrawals, including effects on federally listed or proposed threatened or endangered species.

*Cultural Resources:*

- Effect on known and undiscovered cultural resources.
- Native American and tribal concerns, including traditional cultural properties.

*Land Use, Recreation and Special Interest Areas, and Visual Resources:*

- Potential for impacts on Utah-designated Agricultural Protection Areas.
- Impacts on grazing and livestock as a result of cutting fences and having an open trench in range land.
- Impacts on farming as a result of reduced soil fertility (top/subsoil mixing), disrupted irrigation and drainage patterns.
- Impacts on residences, including proximity of facilities to existing structures and conflicts with planned and future development.
- Impacts on existing or proposed roadless and wilderness areas.
- Impacts on existing conservation easements and potential for future preclusion from conservation easements.
- Impacts on recreation (e.g., fishing, hunting, boating, camping, and hiking).

*Socioeconomics:*

- Effects of construction workforce demands on public services and temporary housing.

*Air Quality and Noise:*

- Effects on local air quality and noise environment from construction and operation of the proposed facilities.

*Reliability and Safety:*

- Potential hazards to natural gas pipelines from wildfires, and potential for construction to start a wildfire.
- Potential for third-party damage or inadequate maintenance of the pipeline to cause a pipeline incident.
- Assessment of security associated with operation of natural gas facilities.

*Alternatives:*

- Use of alternative systems to transport natural gas, such as the LNG terminals proposed in Oregon.
- Evaluation of the northern route alternative.
- Use of existing corridors (e.g., Interstate 80, Questar pipelines, petroleum pipelines south of Utah State Highway 30, the West Wide Energy Corridor).
- Minor variations to avoid specific features or resources.

*Cumulative Impacts:*

- Impacts of the project when combined with other actions in the same region, particularly the multiple LNG terminals and natural gas pipeline projects proposed in Oregon.
- Potential for cumulative impacts from siting multiple utilities within the same corridor.
- Potential for the new corridor to attract future utility lines and result in cumulative impacts.

We will make recommendations in the EIS on how to lessen or avoid impacts on the various resource areas and evaluate possible alternatives to the proposed project or portions of the project.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about Ruby's planned project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before October 29, 2008.

For your convenience, there are three methods which you can use to submit written comments to the Commission. In all instances please reference the project docket number (PF08-9-000)

with your submission. The Commission strongly encourages electronic filing of comments and has dedicated eFiling staff available to assist you at 202-502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at <http://www.ferc.gov> under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on Filing."

(3) You may file your comments by mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.; Room 1A, Washington, DC 20426.

Label one copy of your comments for the attention of Gas 1; DG2E; PJ-11.1.

The public scoping meetings referenced on page 1 of this notice are designed to provide another opportunity to offer comments on the Ruby Pipeline Project. Interested groups and individuals are encouraged to attend these meetings and to present comments on the environmental issues they believe should be addressed in the EIS. Transcripts of the meetings will be made so that your comments will be accurately recorded. In addition, we have asked representatives from Ruby to be available with project location maps and other technical information to answer landowner concerns after each meeting.

Once Ruby formally files its application with the Commission, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for

becoming an intervenor are included in the User's Guide under the "eFiling" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission. You do not need intervenor status to have your environmental comments considered.

#### Environmental Mailing List

If you received this notice, you are currently on the environmental mailing list for this project. If you do not want to send comments at this time and have not previously sent comments to us on this project or presented comments at one of the public scoping meetings, but still want to remain on our mailing list, please return the Mailing List Retention Form (appendix 2). If you do not submit or present comments or if you do not return the Mailing List Retention Form, you will be removed from the Commission's environmental mailing list for this project.

#### Availability of Additional Information

Additional information about the Project is available from the FERC's Office of External Affairs at 1-866-208-FERC (3372) or on the FERC Internet Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, PF08-9). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link on the FERC Internet Web site also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the FERC offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site (<http://www.ferc.gov/docs-filing/esubscription.asp>).

Information concerning the involvement of the BLM in the EIS process may be obtained from Mark Mackiewicz, PMP, National Project Manager, at (435) 636-3616. Information concerning the involvement of the USFS may be obtained from Catherine

Callaghan at the Fremont-Winema National Forest at (541) 947-2151, and David Ream (801) 236-3400 at the Wasatch-Cache National Forest.

Finally, Ruby has established an Internet Web site for its project at <http://www.rubypipeline.com>. The Web site includes a description of the project as well as project maps and links to related documents. Information can also be obtained by calling Ruby directly at 1-877-598-5263 (toll free) or 1-719-520-4450.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8-23216 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP07-139-000, RP08-479-000, RP08-487-000 (not consolidated)]

#### Algonquin Gas Transmission, LLC, Saltville Gas Storage Company, LLC, East Tennessee Natural Gas, LLC; Notice of Technical Conference

September 26, 2008.

On January 19, 2007, Algonquin Gas Transmission, LLC (Algonquin) filed proposed changes to its tariff sheets concerning, among other things, a net present value (NPV) allocation methodology for available capacity that considered probability of default as one of its factors. On February 16, 2007, the Commission accepted and suspended the proposed tariff changes, subject to refund and conditions.<sup>1</sup> On July 19, 2007, the Commission accepted Algonquin's compliance filing subject to certain modifications.<sup>2</sup> On September 19, 2007, the Commission granted a request for rehearing for further consideration.

On August 1, 2008, in Docket No. RP08-479-000, Saltville Gas Storage Company, LLC (Saltville) and, in Docket No. RP08-487-000, East Tennessee Natural Gas, LLC (East Tennessee) filed proposed changes to their respective tariffs concerning, among other things, a NPV allocation methodology for available capacity that considered probability of default as one of its factors. On August 29, 2008, the Commission accepted and suspended the proposed tariff changes of both

Saltville<sup>3</sup> and East Tennessee,<sup>4</sup> subject to refund and conditions, and the outcome of a technical conference. In both orders, the Commission directed its Staff to convene a technical conference to address the proposed services and terms and conditions, and to report the results of the technical conference to the Commission within 120 days.

On September 24, 2008 the Commission staff sent data requests to Algonquin, Saltville, and East Tennessee requesting information about the companies' credit practices, default history, and proposed use of a probability of default factor in determining NPV of bids for available capacity. Responses to the data requests are due on October 6, 2008.

Take notice that a technical conference to discuss issues raised by the filings of Algonquin, Saltville, and East Tennessee will be held on Wednesday, October 22, 2008 at 9:30 am (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The parties to all three proceedings should be prepared to discuss the issues raised by the filings, in particular issues concerning the probability of default factor. Parties should also be prepared to discuss companies' responses to the data requests including their current methodologies for allocating capacity, what, if any deficiencies may exist with these methodologies, and how the proposed probability of default factor addresses the deficiencies. The parties should also be prepared to discuss the need for a probability of default factor for both creditworthy and non-creditworthy customers, whether the proposed use of a probability of default factor unreasonably limits the pool of qualified potential bidders for available capacity, and the merits of not separating the probability of default assessment from the NPV bid.

The Commission's conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

All parties and staff are permitted to attend. For further information please

<sup>1</sup> *Algonquin Gas Transmission, LLC*, 118 FERC ¶61,123.

<sup>2</sup> *Id.*, 120 FERC ¶61,072.

<sup>3</sup> *Saltville Gas Storage Company LLC*, 124 FERC ¶61,209.

<sup>4</sup> *East Tennessee Natural Gas, LLC*, 124 FERC ¶61,210.

contact Vince Mareino at (202) 502-6167 or [Vince.Mareino@ferc.gov](mailto:Vince.Mareino@ferc.gov).

**Kimberly D. Bose,**  
Secretary.

[FR Doc. E8-23210 Filed 10-1-08; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Southwestern Power Administration

#### Robert D. Willis Hydropower Rate Schedules

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of rate order.

**SUMMARY:** Pursuant to Delegation Order Nos. 00-037.00, effective December 6, 2001, and 00-001.00C, effective January 31, 2007, the Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA-59, which increases the power rate for the Robert Douglas Willis Hydropower Project (Willis) pursuant to the following Willis Rate Schedule:

Rate Schedule RDW-08, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Municipal Power Agency (Contract No. DE-PM75-85SW00117)

**DATES:** The effective period for the rate schedule specified in Rate Order No. SWPA-59 is October 1, 2008, through September 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. James K. McDonald, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595-6690, [jim.mcdonald@swpa.gov](mailto:jim.mcdonald@swpa.gov).

**SUPPLEMENTARY INFORMATION:** The existing hydroelectric power rate for the Robert Douglas Willis project is \$815,580 per year. The Federal Energy Regulatory Commission approved this rate on a final basis on February 23, 2007, in Docket EF-07-4081-000 for the period January 1, 2007, through September 30, 2010 (see 118 FERC ¶ 62150). The 2008 Willis Power Repayment Studies indicate the need for an increase in the annual rate by \$113,808 or 14.0 percent beginning October 1, 2008.

The Administrator, Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" in connection with the proposed rate schedule. On August 5, 2008,

Southwestern published notice in the **Federal Register** (73 FR 45435), of a 30-day comment period, together with a combined Public Information and Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate increase for the Willis project. The public forum was canceled when no one expressed an intention to participate. Written comments were accepted through September 4, 2008. One comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Agency, Sam Rayburn Dam Electric Cooperative, and the Vinton Public Power Authority, which stated that they had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA-59, on an interim basis, which increases the existing Robert D. Willis rate to \$929,388, per year, for the period October 1, 2008, through September 30, 2012.

Dated: September 25, 2008.

**Jeffrey Kupfer,**  
Deputy Secretary.

#### Deputy Secretary of Energy

[Rate Order No. SWPA-59]

#### In the matter of: Southwestern Power Administration, Robert D. Willis Hydropower Project Rate; Order Confirming, Approving and Placing Increased Power Rate Schedule In Effect On an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the

Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Delegation Order No. 0204-108, as amended, was rescinded and subsequently replaced by Delegation Orders 00-037.00 (December 6, 2001) and 00-001-00C (January 23, 2007). The Deputy Secretary issued this rate order pursuant to said delegations.

#### Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983, the Sam Rayburn Municipal Power Agency (SRMPA) proposed to sponsor and finance the development at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydropower Project (Willis).

The Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMPA. Under the Southwestern/SRMPA power sales Contract No. DE-PM75-85SW00117, SRMPA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

In the FERC Docket No. EF07-4081-000, issued February 23, 2007, for the period January 1, 2007, through September 30, 2010, the FERC confirmed and approved the current annual Willis rate of \$815,580.

#### Discussion

Southwestern's Current PRS indicates that the existing annual power rate of

\$815,580 is insufficient to produce the annual revenues necessary to accomplish repayment as required by Section 5 of the Flood Control Act of 1944 and Department of Energy (DOE) Order No. RA 6120.2. The increased revenue requirement is due to an increase in the U.S. Army Corps of Engineers (Corps) projected operations and maintenance costs. The Revised PRS indicates that an increase in annual revenues of \$113,808 beginning October 1, 2008, is sufficient to accomplish repayment of the Federal investment in the required number of years. Accordingly, Southwestern developed a proposed rate schedule based on that increased revenue requirement.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions," has been followed in connection with the proposed rate adjustment. More specifically, opportunities for public review and comment during a 30-day period on the proposed Willis power rate were announced by a **Federal Register** (73 FR 45435) notice published on August 5, 2008. The combined Public Information and Comment Forum scheduled for August 13, 2008, in Tulsa, Oklahoma was canceled as no one expressed an intent to participate. Written comments were due by September 4, 2008. Southwestern provided the **Federal Register** notice, together with requested supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 30-day public participation process, Southwestern discussed with the customer representatives the preliminary information on the proposed rate adjustment. Only one formal comment was received during the public process. That comment, on behalf of SRMPA, Sam Rayburn Dam Electric Cooperative, and the Vinton Public Power Authority, expressed no objection to the final proposed rate.

Upon conclusion of the comment period in September 2008, Southwestern finalized the PRS and rate schedule for the proposed annual rate of \$929,388 which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an annual increase of 14.0 percent.

#### Availability of Information

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power

Administration, One West Third Street, Tulsa, Oklahoma 74103.

#### Comments and Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

#### Other Issues

There were no other issues raised during the informal discussions or during the formal public participation period.

#### Administrator's Certification

The 2008 Revised Willis PRS indicates that the annual power rate of \$929,388 will repay all costs of the project, including amortization of the power investment consistent with provisions of the Department of Energy (DOE) Order No. RA 6120.2. In accordance with Delegation Order Nos. 00-037.00 (December 6, 2001) and 00-001.00C (January 31, 2007), and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Willis power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

#### Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

#### Order

In view of the foregoing and pursuant to the authority delegated to me, I hereby confirm, approve and place in effect on an interim basis, for the period October 1, 2008, through September 30, 2012, the annual Robert Douglas Willis Hydropower Rate of \$929,388 for the sale of power and energy from Robert Douglas Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE-PM75-85SW00117, as amended. This rate shall remain in effect on an interim basis through September 30, 2012, or until the FERC confirms and approves the rate on a final basis.

Dated: September 25, 2008.

**Jeffrey Kupfer,**

*Deputy Secretary.*

[FR Doc. E8-23230 Filed 10-1-08; 8:45 am]

**BILLING CODE 6450-01-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2008-0433; FRL-8724-3]

#### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal), EPA ICR Number 1983.05, OMB Control Number 2060-0489

**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 that is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 3, 2008.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA-HQ-OECA-2008-0433, to (1) EPA online using <http://www.regulations.gov> (our preferred method), or by e-mail to [docket.oeca@epa.gov](mailto: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:** John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243-05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-0296; fax number: (919) 541-3207; e-mail address: [schaefer.john@epa.gov](mailto:schaefer.john@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-2008-0433, which is available for public viewing online at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

Use EPA's electronic docket and comment system at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

**Title:** NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (Renewal).

**ICR Numbers:** EPA ICR Number 1983.05, OMB Control Number 2060-0489.

**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:** All existing sources must be in compliance with the requirements of the Generic Maximum Achievable Control Technology (MACT) National Emissions Standard for Hazardous Air Pollutants (NESHAP) within three years of the effective date (promulgation date) of standards for an affected source. All new sources must be in compliance with the requirements of the Generic MACT (GMACT) NESHAP upon startup or prior to the promulgation date of standards for an affected source, whichever is later. These standards apply to hazardous air pollutant (HAP) emission sources in the carbon black production, cyanide chemicals manufacturing, ethylene production, and spandex production source categories.

Compliance is assumed through initial performance testing or design analysis, as appropriate, and ongoing compliance is demonstrated through parametric monitoring. The facilities are subject to the major source provisions specified under the GMACT NESHAP.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 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 that manufacture carbon black, cyanide chemicals, ethylene, and spandex.

**Estimated Number of Respondents:** 72.

**Frequency of Response:** Occasionally, semiannually and annually.

**Estimated Total Annual Hour Burden:** 13,533

**Estimated Total Annual Cost:** \$1,439,214, which is comprised of Operations & Management (O&M) costs of \$359,065, labor costs of \$1,080,149, and no annualized capital/start-up costs.

**Changes in the Estimates:** There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 26, 2008.

**Sara Hisel-McCoy,**

*Director, Collection Strategies Division.*

[FR Doc. E8-23256 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2008-0423; FRL-8724-2]

### Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Petroleum Refineries (Renewal), EPA ICR Number 1054.10, OMB Control Number 2060-0022

**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 that is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before November 3, 2008.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA-HQ-OECA-2008-0423, to (1) EPA online using <http://www.regulations.gov> (our preferred method), or by e-mail to [docket.oeca@epa.gov](mailto: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:** John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243-05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-

0296; fax number: (919) 541-3207; e-mail address: [schaefer.john@epa.gov](mailto:schaefer.john@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-2008-0423, which is available for public viewing online at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744 and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

Use EPA's electronic docket and comment system at <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

**Title:** NSPS for Petroleum Refineries (40 CFR part 60, subpart J).

**ICR Numbers:** EPA ICR Number 1054.10, OMB Control Number 2060-0022.

**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 Petroleum Refineries were promulgated on March 8, 1974. These regulations apply to the following affected facilities in petroleum refineries: Fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and Claus sulfur recovery plants of more than 20 long tons per day commencing construction, modification or reconstruction after the date of proposal.

Affected sources are required to complete initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. 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 50 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:** Petroleum refineries.

**Estimated Number of Respondents:** 132.

**Frequency of Response:** Initially, occasionally and semiannually.

**Estimated Total Annual Hour Burden:** 14,134.

**Estimated Total Annual Cost:** \$1,682,453, which is comprised of \$541,464 in Operations & Maintenance (O&M) costs, \$1,140,989 in labor costs, and no annualized capital/start-up costs.

**Changes in the Estimates:** There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 26, 2008.

**Sara Hisel-McCoy,**

*Director, Collection Strategies Division.*

[FR Doc. E8-23257 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8717-5; Docket ID No. EPA-HQ-ORD-2008-0700]

### BASINS 4.0 Climate Assessment Tool (CAT): Supporting Documentation and Users Manual

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public comment period.

**SUMMARY:** EPA is announcing a 30-day public comment period for the draft document titled, "BASINS 4.0 Climate Assessment Tool (CAT): Supporting Documentation and Users Manual" (EPA/600/R-08/088). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

The Office of Research and Development, in partnership with EPA's Office of Water, recently developed a Climate Assessment Tool (CAT) for the Office of Water's BASINS 4.0 watershed modeling system. BASINS CAT provides a flexible set of capabilities for creating user-defined climate change scenarios for assessing the influence of climate variability and change on water quantity and quality using the Hydrologic Simulation Program—FORTRAN (HSPF) watershed model. This report provides documentation and technical user support including a discussion of tool capabilities with hands-on tutorials demonstrating the application of BASINS CAT to a range of problems. BASINS 4.0 (with the BASINS CAT) can be downloaded from EPA's BASINS Web site at <http://www.epa.gov/waterscience/basins/b3webdwn.htm>.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality

guidelines. This document has not been formally disseminated by EPA. It does not represent, and should not be construed to represent, any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

**DATES:** The 30-day public comment period begins on the October 2, 2008, and ends November 3, 2008. Technical comments should be in writing and must be received by EPA by November 3, 2008.

**ADDRESSES:** The draft "BASINS 4.0 Climate Assessment Tool (CAT): Supporting Documentation and Users Manual" is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, "BASINS 4.0 Climate Assessment Tool (CAT): Supporting Documentation and Users Manual."

Comments may be submitted electronically via <http://www.regulations.gov>, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-1753; or e-mail: [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov).

For technical information, contact Thomas Johnson, NCEA; telephone: 703-347-8618; facsimile: 703-347-8694; or e-mail: [johnson.thomas@epa.gov](mailto:johnson.thomas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*How to Submit Technical Comments to the Docket at <http://www.regulations.gov>*

Submit your comments, identified by Docket ID No. EPA-HQ-ORD 2008-0700, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [ORD.Docket@epa.gov](mailto:ORD.Docket@epa.gov).
- *Fax:* 202-566-1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460. The phone number is 202-566-1752.

- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-ORD-2008-0700. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov>, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* Documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: September 11, 2008.

**Rebecca Clark,**

*Director, National Center for Environmental Assessment.*

[FR Doc. E8-23247 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8724-1]

**Clean Water Act Section 303(d): Availability of List Decisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's June 26, 2008 Public Notice of Final Decisions to Add Waters and Pollutants to Arkansas' 2008 Section 303(d) List.

On June 26, 2008, EPA published a notice in the **Federal Register** at Volume 73, Number 124, page 36319 providing the public the opportunity to review its final decisions to add waters and pollutants to Arkansas' 2008 Section 303(d) List as required by EPA's Public Participation regulations (40 CFR Part 25). Based on the Responsiveness Summary, EPA has decided to remove six waterbody-pollutant combinations identified in EPA's Final Action on Arkansas' 2008 Section 303(d) list based on additional information provided by the Arkansas Department of Environmental Quality (ADEQ). Furthermore, EPA is delisting five waterbody-pollutant combinations previously approved by EPA on June 18, 2008 based on information provided by GBMc & Associates. EPA is also adding one new waterbody-pollutant combination, Bayou DeView and aluminum, based on information provided by ADEQ. Therefore, EPA has

revised its decision to disapprove Arkansas' decisions not to list 67 waterbody-pollutant combinations instead of the 73 waterbody-pollutant combinations proposed in EPA's Record of Decision for the 2008 Section 303(d) List. With the addition of Bayou DeView, EPA is adding 68 waterbody-pollutant combinations. A listing of these 68 waterbody-pollutant combinations along with priority rankings for inclusion on the 2008 Section 303(d) List can be found in Tables 2 and 4 of EPA's Responsiveness Summary. A listing of the five waterbody-pollutant combinations EPA is delisting can be found in Table 3 of EPA's Responsiveness Summary.

**ADDRESSES:** Copies of EPA's Responsiveness Summary Concerning EPA's June 26, 2008 Public Notice of Final Decisions to Add Waters and Pollutants to Arkansas; 2008 Section 303(d) List and the list of 68 waterbody-pollutant pairs can be obtained at EPA Region 6's Web site at <http://www.epa.gov/region06/water/npdes/tmdl/index.htm>, or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202-2733, telephone (214) 665-2145, facsimile (214) 665-6490, or e-mail: [smith.diane@epa.gov](mailto:smith.diane@epa.gov). Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Diane Smith at (214) 665-2145.

**SUPPLEMENTARY INFORMATION:** Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

Consistent with EPA's regulations, Arkansas submitted to EPA its listing decisions under Section 303(d) on April 1, 2008. On June 18, 2008, EPA approved Arkansas' listing of 369 waterbody-pollutant combinations and associated priority rankings. EPA took neither an approval or disapproval action on 34 waters listed for beryllium and twenty (20) waterbody-pollutant pairs that appear to have been listed in error. EPA disapproved Arkansas' decisions not to list 73 waterbody-pollutant combinations. Based on the public comments, EPA has revised its decision to disapprove Arkansas's

decision not to list 67 waterbody-pollutant combinations and added one additional waterbody-pollutant combination. A listing of these 68 waterbody-pollutant combinations along with priority rankings for inclusion on the 2008 Section 303(d) List can be found in Table 4 of EPA's Responsiveness Summary. Furthermore, based on public comments, EPA is reversing its approval decision for five waterbody-pollutant combinations in favor of delisting. A listing of these five waterbody-pollutant combinations which are being delisted can be found in Table 3 of EPA's Responsiveness Summary.

Dated: September 23, 2008.

**Miguel I Flores,**

*Director, Water Quality Protection Division, Region 6.*

[FR Doc. E8-23259 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8723-7]

### National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notification of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come basis.

**DATES:** The NEJAC meeting will convene Tuesday, October 21, 2008, from 10:30 a.m. to 5:30 p.m., and reconvene Wednesday, October 22, 2008, from 9 a.m. to 9:30 p.m., and Thursday, October 23, 2008, from 9 a.m. to 3 p.m. One public comment session relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday evening, October 22, 2008, from 6:30 p.m. to 9:30 p.m. All noted times are Eastern Time. Members of the public who wish

to participate in the public comment period are encouraged to pre-register by October 13, 2008.

**ADDRESSES:** The NEJAC committee meeting will be held at the Ritz-Canton Hotel, 181 Peachtree Avenue, NE., Atlanta, GA 30303, telephone (404) 659-0400 or (800) 241-3333.

**FOR FURTHER INFORMATION CONTACT:**

Correspondence concerning the meeting should be sent to Ms. Lisa Hammond, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; by telephone at (202) 564 0736, via e-mail at [hammond.lisa@epa.gov](mailto:hammond.lisa@epa.gov); or by FAX at (202) 564-1624. Additional information about the meeting is available at the Internet Web site: <http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html>.

Pre-registration for all attendees is recommended. To register online, visit the Web site above. Requests for pre-registration forms should be sent to Ms. Lisa Hammond at (202) 564-0736 or [Hammond.lisa@epa.gov](mailto:Hammond.lisa@epa.gov). Non-English speaking attendees wishing to arrange for a foreign language interpreter also may make appropriate arrangements using these numbers.

**SUPPLEMENTARY INFORMATION:** The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, "advice about broad, crosscutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory and economic issues related to environmental justice.

The meeting shall be used to receive comments, discuss, and provide recommendations regarding four major areas: (1) Factors to identify and address disproportionate environmental impacts; (2) environmental justice best practices; (3) differential impacts of climate change; and (4) strategies to identify, mitigate, and/or address the disproportionate burden on communities of air pollution resulting from goods movement activities.

*A. Public Comment:* Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative of a community, an organization, or a group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows: Name of Speaker, Name of Organization/Community, Address/Telephone/E-mail, Description of Concern and its Relationship to the

policy issue(s), and Recommendations or desired outcome. Written comments received by October 10, 2008 will be included in the materials distributed to the members of the NEJAC. Written comments received after that date will be provided to the NEJAC as logistics allow. All information should be sent to the address, e-mail, or fax number listed in the CONTACT section above.

**B. Information about Services for Individuals with Disabilities:** For information about access or services for individuals with disabilities, please contact Ms. Lisa Hammond at (202) 564-0736 or [Hammond.lisa@epa.gov](mailto:Hammond.lisa@epa.gov). To request accommodation of a disability, please contact Ms. Hammond, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request. All requests should be sent to the address, e-mail, or fax number listed in the CONTACT section above.

Dated: September 26, 2008.

**Charles Lee,**

*Designated Federal Officer, National Environmental Justice Advisory Council.*

[FR Doc. E8-23165 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-M**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 8720-4]

### National Environmental Justice Advisory Council; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 Section 9(c). The purpose of the NEJAC is to provide advice and recommendations to the Administrator on issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

It is determined that NEJAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Victoria Robinson, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania

Avenue, NW., (Mail Code 2201A), Washington, DC 20460.

Dated: September 19, 2008.

**Charles Lee,**

*Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.*

[FR Doc. E8-23166 Filed 10-1-08; 8:45 am]

**BILLING CODE 6560-50-M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:04 a.m. on Monday, September 29, 2008, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to open bank assistance transaction.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Chairman Sheila C. Bair, concurred in by Director John C. Dugan (Comptroller of the Currency), Director Thomas J. Curry (Appointive), and Director John M. Reich (Director, Office of Thrift Supervision), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 29, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8-23275 Filed 10-1-08; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, October 2, 2008 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

Draft Advisory Opinion 2008-10: Wide Orbit, Inc. d/b/a VoterVoter.com by Joseph M. Birkenstock, Esquire.

Draft Advisory Opinion 2008-13: Pacific Green Party of Oregon, by Patrick Driscoll, Treasurer.

Notice of Proposed Rulemaking—Repeal of Millionaires' Amendment Regulations.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694-1040, at least 72 hours prior to the hearing date.

**DATE AND TIME:** Tuesday, October 7, 2008 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:**

Robert Biersack, Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E8-23056 Filed 10-1-08; 8:45 am]

**BILLING CODE 6715-01-M**

## 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 17, 2008.

**A. Federal Reserve Bank of Chicago**  
(Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Peter T. Rogers*, Appleton, Wisconsin, to retain voting shares of M.S.B. Bancorporation, Inc., and thereby indirectly retain voting shares of Premier Community Bank, Marion, Wisconsin.

Board of Governors of the Federal Reserve System, September 29, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8-23218 Filed 10-1-08; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 23, 2008. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, October 21, by completing the form found on line at: <https://www.federalreserve.gov/secure/forms/cacregistration.cfm>.

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- Housing and Economic Recovery Act of 2008: Members will discuss various initiatives included in the legislation, such as the new Federal Housing Administration "HOPE for Homeowners" refinancing program and the provision of \$4 billion in block grant funds for the redevelopment of abandoned and foreclosed homes
- Proposed rules regarding credit cards and overdraft services: Members

will discuss issues raised in the public comments received on the Board's proposed rules prohibiting unfair or deceptive acts or practices in connection with credit card accounts and overdraft services for deposit accounts.

- Home Mortgage Disclosure Act (HMDA): Members will discuss key findings from the 2007 HMDA data.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake, 202-452-6470.

Board of Governors of the Federal Reserve System, September 29, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8-23241 Filed 10-1-08; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the NTP Board of Scientific Counselors

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

**ACTION:** Meeting announcement and request for comments.

**SUMMARY:** Pursuant to Public Law 92-463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (NTP BSC). The NTP BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP Director and evaluates the scientific merit of the NTP's intramural and collaborative programs.

**DATES:** The NTP BSC meeting will be held on November 20-21, 2008. The deadline for submission of written comments is November 6, 2008, and for pre-registration to attend the meeting, including registering to present oral comments, is November 13, 2008. Persons needing interpreting services in order to attend should contact 301-402-8180 (voice) or 301-435-1908 (TTY). For other accommodations while on the

NIEHS campus, contact 919-541-2475 or e-mail [niehsoeeo@niehs.nih.gov](mailto:niehsoeeo@niehs.nih.gov). Requests should be made at least 7 days in advance of the event.

**ADDRESSES:** The NTP BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP BSC, NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD A3-01, Research Triangle Park, NC 27709; telephone: 919-541-4253; fax: 919-541-0295; or e-mail: [shane@niehs.nih.gov](mailto:shane@niehs.nih.gov). Courier address: NIEHS, 111 T.W. Alexander Drive, Room A322, Research Triangle Park, NC 27709.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Shane (telephone: 919-541-4253 or e-mail: [shane@niehs.nih.gov](mailto:shane@niehs.nih.gov)).

### SUPPLEMENTARY INFORMATION:

#### Preliminary Agenda Topics and Availability of Meeting Materials

November 20-21, 2008

- Update of NTP activities
- NTP testing program: nominations and proposed research projects on bisphenol AF, dimethylamine borane, ethylene glycol 2-ethylhexyl ether, hydroxyurea, L-beta-methylaminoalanine, and triclosan
- BSC working group report on criteria for evaluating outcomes in immunotoxicology studies
- BSC working group report on criteria for evaluating outcomes in reproductive toxicology studies
- BSC working group report on criteria for evaluating outcomes in developmental toxicology studies
- Toxicology of DNA-based therapies
- Concept review: production of mold materials
- Sources of variability in NTP toxicogenomic studies
- Update on the High Throughput Screening Initiative

The preliminary agenda, roster of NTP BSC members and *ad hoc* reviewers, draft NTP research concepts, public comments, and any additional information, when available, will be posted on the NTP BSC meeting Web site (<http://ntp.niehs.nih.gov/go/165>) or may be requested in hardcopy from the Executive Secretary for the NTP BSC (see **ADDRESSES** above). Updates to the agenda will also be posted to this site. Following the meeting, summary minutes will be prepared and made available on the NTP meeting Web site.

**NTP Testing Program: Nominations and Proposed Research Projects**

The NTP actively seeks to identify and select for study chemicals and other substances for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal open nomination and selection process. Substances considered appropriate for study generally fall into two broad, yet overlapping categories: (1) Substances judged to have high concern as possible public health hazards based on the extent of human exposure and/or suspicion of toxicity and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, e.g., by facilitating cross-species extrapolation or evaluating dose-response relationships. Nominations are subject to a multi-step, formal process of review before selections for testing are made and toxicological studies are

designed and implemented. The nomination review and selection process is accomplished through the participation of representatives from the NIEHS, other federal agencies represented on the Interagency Committee for Chemical Evaluation and Coordination (ICCEC), the NTP BSC, the NTP Executive Committee—the NTP federal interagency policy body, and the public. The nomination review and selection process is described in further detail on the NTP Web site (<http://ntp.niehs.nih.gov/>, select “Nominations to the Testing Program”).

Table 1 lists new nominations to be reviewed at the NTP BSC meeting. Background documents for each nomination are available on the NTP Web site at <http://ntp.niehs.nih.gov/go/nom>. The NTP invites interested parties to submit written comments, provide supplementary information, or present oral comments at the NTP BSC meeting on the nominated substances and preliminary study recommendations (see “Request for Comments” below).

The NTP welcomes toxicology study information from completed, ongoing, or anticipated studies, as well as information on current U.S. production levels, use or consumption patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is interested in identifying appropriate animal and non-animal experimental models for mechanistic-based research, including genetically modified rodents and high-throughput *in vitro* test methods, and as such, solicits comments regarding the use of specific *in vivo* and *in vitro* experimental approaches to address questions relevant to the nominated substances and issues under consideration. Although the deadline for submission of written comments to be considered at the NTP BSC meeting is November 6, 2008 (see “Request for Comments” below), the NTP welcomes comments or additional information on these study nominations at any time.

TABLE 1—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES

| Substance [CAS No.]                             | Nominated by <sup>1</sup>                              | Nomination rationale   | Preliminary study recommendations <sup>2</sup>  |
|---|--|--|---|
| Bisphenol AF [1478–61–1] .....                  | NIEHS .....  | Moderate production and use in polymer synthesis; short-term studies suggest potential for endocrine disruption and adverse reproductive effects; lack of adequate toxicity data.  | —Comprehensive toxicological characterization.  |
| Dimethylamine borane [74–94–2] ..               | National Institute for Occupational Safety and Health. | Possible contact sensitizer and systemic toxicant but insufficient evidence as determined by the NIOSH Dermal Subject Matter Expert Workgroup.   | —Dermal absorption studies.<br>—Skin sensitization studies.<br>—Subchronic dermal toxicity studies with neurotoxicity and behavioral assessments.                             |
| Ethylene glycol 2-ethylhexyl ether [1559–35–9]. | NIEHS .....  | High production volume; potential worker exposures; suspicion of toxicity based on chemical structure; lack of adequate toxicity data.   | —Reproductive and developmental toxicity studies.   |
| Hydroxyurea [127–07–1] .....                    | NIEHS and Private Individual .....                     | Long-term safety concern when used as therapy for sickle cell anemia; NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) Expert Panel identified a critical data need for multi-generational experimental animal studies to assess the long-term effects of prenatal and postnatal exposures on postnatal development including developmental neurotoxicity, reproductive function, and carcinogenicity. | No experimental animal toxicity studies at this time; human studies currently being considered by the NIH and other federal agencies may address outstanding safety concerns. |
| L-beta-Methylaminoalanine [15920–93–1].         | NIEHS .....  | Natural product produced by cyanobacteria with localized and potentially widespread environmental occurrence; suspected risk factor for neurological disease(s); lack of adequate toxicity data.   | —Absorption, distribution, metabolism, and elimination studies.<br>—Neurotoxicity studies.<br>—Biomolecular screening studies.  |

TABLE 1—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES—Continued

| Substance [CAS No.]         | Nominated by <sup>1</sup>                                 | Nomination rationale  | Preliminary study recommendations <sup>2</sup>  |
|-----------------------------|---|---|---|
| Triclosan [3380–34–5] ..... | Private Individual and U.S. Food and Drug Administration. | Widespread use in consumer products; frequent and long-term exposure for all age groups; lack of adequate toxicity data for dermal exposures. | —Carcinogenicity studies via dermal administration.<br>—Phototoxicity studies.<br>—Reproductive toxicity studies. |

<sup>1</sup> National Institute of Environmental Health Sciences (NIEHS).

<sup>2</sup> The term “comprehensive toxicological characterization” in this table refers to the approximate scope of a research program to address toxicological data needs. The types of toxicological studies that would be considered by NTP staff during the conceptualization and design of a research program are biomolecular screening, in vitro mechanistic, in vitro and in vivo genotoxicity, absorption, disposition, metabolism, and elimination, short-term repeat dose (2–4 weeks) in vivo studies, subchronic toxicity (13–26 weeks), chronic toxicity (1–2 years), carcinogenicity in conventional or genetically modified rodent models, organ systems toxicity (immunotoxicity, reproductive and developmental toxicity, neurotoxicity), in vivo mechanistic, toxicokinetics, and other special studies as appropriate (e.g., chemistry, toxicogenomics, phototoxicity).

To facilitate review of proposed research projects by the NTP BSC and the public, NTP staff developed a draft research concept document for each nomination recommended for study. A research concept is a brief document outlining the nomination or study rationale, and the significance, study approach, and expected outcome of a proposed research program tailored for each nomination. The purpose of these research concepts is to outline the general elements of a program of study that would address the specific issues that prompted the nomination, but also encompass studies that may address larger public health issues or topics in toxicology that could be addressed appropriately through studies on the nominated substance(s). Draft research concepts for the new nominations listed in Table 1 will be available on the NTP BSC meeting page (<http://ntp.niehs.nih.gov/go/165>) by October 9, 2008.

#### Attendance and Registration

The meeting is scheduled for November 20–21, 2008, beginning at 8:30 a.m. on each day and continuing to 5 p.m. on November 20 and on November 21 until adjournment. The meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP BSC meeting Web site (<http://ntp.niehs.nih.gov/go/165>) by November 13, 2008, to facilitate planning for the meeting. The NTP is making plans to videocast the meeting through the Internet at <http://www.niehs.nih.gov/news/video/live>.

#### Request for Comments

Written comments submitted in response to this notice should be received by November 6, 2008. Comments will be posted on the NTP BSC meeting Web site and persons

submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, e-mail, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the NTP BSC on the agenda topics. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the NTP BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for the NTP BSC (see **ADDRESSES** above) by November 13, 2008, to enable review by the NTP BSC prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the NTP BSC and NIEHS/NTP staff and to supplement the record.

#### Background Information on the NTP Board of Scientific Counselors

The NTP BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the overall program and its centers. Specifically, the NTP BSC advises the NTP on matters of scientific program

content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. NTP BSC meetings are held annually or biannually.

Dated: September 23, 2008.

**Samuel H. Wilson,**

*Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E8–23181 Filed 10–1–08; 8:45 am]

BILLING CODE 4140–01–P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of Plans for Updated Evaluations of Genistein and Soy Formula; Request for Public Comments and Nomination of Expert Panel Members

**AGENCY:** National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

**ACTION:** Notice of expert panel evaluation of the reproductive and developmental toxicities of genistein and soy formula.

**SUMMARY:** The CERHR plans to convene an expert panel to conduct updated evaluations of the scientific evidence

regarding the potential reproductive and/or developmental toxicity associated with exposure to genistein and soy formula begun in 2006. The expert panel will consist of approximately 10–12 scientists selected for their scientific expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. CERHR invites the submission of information about ongoing studies or upcoming publications on these substances that might be considered for inclusion in the evaluations and the nomination of scientists to serve on the expert panel (see **SUPPLEMENTARY INFORMATION** below). This meeting is tentatively scheduled for spring or summer 2009, although the exact date and location are not yet set. As plans are finalized, they will be announced in the **Federal Register** and posted on the CERHR Web site (<http://cerhr.niehs.nih.gov>). CERHR expert panel meetings are open to the public with time scheduled for oral public comment.

**DATES:** Comments received by November 17, 2008 will be made available to CERHR staff and the expert panel for consideration in the evaluation and posted on the CERHR Web site. Nominations of scientists received by November 17, 2008 will be considered for this panel and for inclusion in the CERHR Expert Registry.

**ADDRESSES:** Public comments and any other correspondence should be submitted to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC-32, Research Triangle Park, NC 27709 (mail), 919-541-3455 (phone), 919-316-4511 (fax), or [shelby@niehs.nih.gov](mailto:shelby@niehs.nih.gov) (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 102, Research Triangle Park, NC 27709.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Genistein (CAS RN: 446-72-0) is a phytoestrogen found in some legumes, especially soybeans. Phytoestrogens are non-steroidal, estrogenic compounds that occur naturally in some plants. In plants, nearly all genistein is linked to a sugar molecule and this genistein-sugar complex is called genistin. Genistin and genistein are found in many food products, especially soy-based foods such as tofu, soy milk, and soy infant formula, and in some over-the-counter dietary supplements. Soy formula is fed to infants as a supplement or replacement for human milk or cow milk.

On March 15–17, 2006, CERHR convened an expert panel to conduct

evaluations of the potential reproductive and developmental toxicities of genistein and soy formula. CERHR selected genistein and soy formula for expert panel evaluation because of (1) The availability of numerous reproductive and developmental toxicity studies in laboratory animals and humans, (2) the availability of information on exposures in infants and women of reproductive age, and (3) public concern for effects on infant or child development. The expert panel reports were released for public comment on May 5, 2006 (**Federal Register** Vol. 71, No. 94, pp. 28368, May 16, 2006). Next, on November 8, 2006 (**Federal Register** Vol. 71, No. 216, pp. 65537, November 8, 2006), CERHR staff released draft NTP Briefs on Genistein and Soy Formula that provided the NTP's interpretation of the potential for genistein and soy formula to cause adverse reproductive and/or developmental effects in exposed humans. CERHR has not completed these evaluations, finalized the briefs, or issued NTP–CERHR monographs on these substances. Since 2006, a substantial number of new publications related to human exposure or reproductive and/or developmental toxicity have been published for these substances and CERHR has determined that updated evaluations of genistein and soy formula are needed.

##### **Request for Comments**

The CERHR invites the public and other interested parties to submit information and comments on genistein and soy formula including toxicology and epidemiologic information from completed and ongoing studies, information on planned studies, and information about current production levels, human exposure, use patterns, and environmental occurrence.

##### **Request for the Nomination of Scientist for the Expert Panel**

The CERHR invites nominations of qualified scientists to serve on the expert panel. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry which include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, and certification by an appropriate scientific board or other entities. Nominations should include contact information and current *curriculum vitae* (if possible) and be forwarded to CERHR (see **ADDRESSES**). Final selection of individuals to serve

on the expert panel will be made in accordance with the Federal Advisory Committee Act and Department of Health and Human Services implementing regulations.

All panel members serve as individual experts and not as representatives of their employers or other organizations. Scientists on the expert panel represent a wide range of expertise including, but not limited to, developmental toxicology, reproductive toxicology, epidemiology, general toxicology, medicine, pharmacokinetics, exposure assessment, and biostatistics.

##### **Background Information on the CERHR**

The NTP established CERHR in 1998 (**Federal Register**, December 14, 1998, Vol. 63, No. 239, page 68782). CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. CERHR follows a formal process for the evaluation of selected substances that includes opportunities for public input.

CERHR invites the nomination of substances for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (<http://cerhr.niehs.nih.gov>) or by contacting Dr. Michael Shelby, CERHR Director (see **ADDRESSES**). CERHR selects substances for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies. Expert panels conduct scientific evaluations of substances selected by CERHR in public forums. Following these evaluations, CERHR prepares the NTP–CERHR monograph on the substance evaluated. The monograph is transmitted to appropriate federal and state agencies and made available to the public.

Dated: September 23, 2008.

**Samuel H. Wilson,**

*Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.*

[FR Doc. E8-23173 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Healthcare Research and Quality**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: “National Study of the Hospital Adverse Event Reporting Follow-Up Survey.” In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(j)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on July 24th, 2008 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment. Changes were made to this 30 day notice to account for the electronic patient records review which were not accounted for in the 60 day notice.

**DATES:** Comments on this notice must be received by December 1, 2008.

**ADDRESSES:** Written comments should be submitted to: AHRQ’s OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ’s desk officer) or by e-mail at [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) (attention: AHRQ’s desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at [doris.lefkowitz@ahrq.hhs.gov](mailto:doris.lefkowitz@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

“National Study of the Hospital Adverse Event Reporting Follow-Up Survey”

This proposed information collection will conduct a survey similar to a previous AHRQ baseline survey conducted in 2005, which examined and characterized adverse event reporting in the Nation’s hospitals (Farley DO, Haviland A, Champagne S, Jain AK, Battles JB, Munier WB, Loeb JM. Adverse Event Reporting Practices by U.S. Hospitals: Results of a National Survey, under review for publication). The follow-up survey will allow AHRQ to examine how hospitals’ use of adverse event reporting systems has changed over time. The baseline survey was completed by 1,652 hospital risk managers selected from a nationally representative sample frame. The follow-up survey will consist of a random sample of 1,200 of the respondents to the baseline survey. We anticipate an 85% response rate for the follow-up survey, resulting in 1,020 completed questionnaires.

Similar to the baseline survey, the follow-up survey will ascertain whether hospitals collect information on adverse events, and how the information is stored. Information will also be collected regarding the hospital’s case definition of a reportable event, whether information on the severity of the adverse event is collected, who might report this information and whether they can report to a system which is confidential and/or anonymous. The questionnaire also asks about the uses of the data that are collected, and whether information is used for purposes including analytic uses, personnel action, and improvement interventions. Finally, the questionnaire asks about the other sources of information that are useful to hospitals for patient safety-related interventions.

This project is being conducted pursuant to AHRQ’s statutory mandates to (1) promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding

all aspects of health care, including methods for measuring quality and strategies for improving quality (42 U.S.C. 299(b)(1)(F)) and (2) conduct and support research on health care and on systems for the delivery of such care, including activities with respect to quality measurement and improvement (42 U.S.C. 299a(a)(2)). In addition, Congress has, in report language, directed AHRQ to provide a report detailing the results of its efforts to reduce medical errors. See Report for the Departments of Labor, Health and Human Services, and Education, and related agencies Appropriation Bill for Fiscal Year 2002, S. Rep. 107–84, at 11 (2001),

This project is being funded by AHRQ and conducted by the RAND Corporation as part of a contract under which RAND serves as the Patient Safety Evaluation Center for AHRQ’s patient safety initiative.

**Method of Collection**

The baseline survey and data collection procedures have been previously conducted and reviewed (under OMB Number 0935–0125, Expiration Date 07/31/2008). The follow-up survey will include an initial mailed survey with two waves of mailed follow-ups as needed, and a Computer-Assisted Telephone Interviewing (CATI) survey follow-up for the remaining non-responders. The survey will be completed by one Risk Manager per hospital.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated annualized burden hours for the respondents’ time to participate in this information collection. The questionnaire is expected to require 25 minutes to complete, resulting in a total burden of 425 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents, which is estimated to be \$11,518. The respondents will not incur any other costs beyond those associated with their time to participate.

**EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS**

| Form name                        | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|----------------------------------|-----------------------|------------------------------------|--------------------|--------------------|
| Risk manager questionnaire ..... | 1,020                 | 1                                  | 25/60              | 425                |
| Total .....                      | 1,020                 | ( <sup>1</sup> )                   | ( <sup>1</sup> )   | 425                |

<sup>1</sup> Not applicable.

## EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

| Form name                        | Number of respondents | Total burden hours | Average hourly wage rate <sup>1</sup> | Total cost burden |
|----------------------------------|-----------------------|--------------------|---------------------------------------|-------------------|
| Risk manager questionnaire ..... | 1,020                 | 425                | \$27.10                               | \$11,518          |
| Total .....                      | 1,020                 | 425                | ( <sup>2</sup> )                      | \$11,518          |

<sup>1</sup> Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2006, "U.S. Department of Labor, Bureau of Labor Statistics."

<sup>2</sup> Not applicable.

### Estimated Annual Costs to the Federal Government

The Agency is supporting the conduct of this survey and analysis of survey data as part of a contract with the RAND Corporation under which RAND serves as the Patient Safety Evaluation Center for AHRQ's patient safety initiative. The estimated cost for this work is \$240,000, including \$190,000 for data collection activities and \$50,000 to design the study, analyze the data and report the findings.

### Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: September 19, 2008.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. E8-23370 Filed 10-1-08; 8:45 am]

BILLING CODE 4160-90-M

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Disease Control and Prevention

#### Ethics Subcommittee, Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting for the aforementioned subcommittee:

*Name:* Ethics Subcommittee, Advisory Committee to the Director (ACD), CDC.

*Time and Date:* 12-2 p.m., October 9, 2008.

*Place:* This meeting will be held by conference call. The call in number is (866) 919-3560 and enter passcode: 4168828.

*Status:* Open to the public. The public is welcome to participate during the public comment period which is tentatively scheduled from 1:30 p.m.-1:45 p.m.

*Purpose:* The Ethics Subcommittee will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

*Matters to be Discussed:* Agenda items will include review of ethics guidance for public health emergency preparedness and response.

*Contact Person for More Information:* Drue Barrett, PhD, Designated Federal Official, Ethics Subcommittee, CDC, 1600 Clifton Road, NE., M/S D-50, Atlanta, Georgia 30333. Telephone 404-639-4690, e-mail: [d Barrett@cdc.gov](mailto:d Barrett@cdc.gov).

The Ethics Subcommittee determines that subcommittee business requires its consideration of this matter on less than 15 days notice to the public and that no earlier notice of this meeting was possible. At the Ethics Subcommittee's September 25, 2008 meeting, the subcommittee discussed this matter and determined that additional consideration is necessary prior to submitting the report to the ACD, CDC. The ACD, CDC is scheduled to meet late October.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 26, 2008.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E8-23268 Filed 10-1-08; 8:45 am]

BILLING CODE 4163-18-P

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

[CMS-1419-N]

#### Medicare Program; Request for Nominations for the Program Advisory and Oversight Committee for the Competitive Acquisition of Durable Medical Equipment and Other Items

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice solicits nominations for individuals to serve on the Program Advisory and Oversight Committee (PAOC) that will advise the Secretary of Health and Human Services on the competitive acquisition of durable medical equipment and certain other items and services under the Medicare program. Section 1847(c) of the Social Security Act requires the Secretary of the Department of Health and Human Services (Secretary) to establish the PAOC. In addition, section 1847(c)(4) exempts the PAOC from the Federal Advisory Committee Act, 5 U.S.C., appendix 2.

**DATES:** Nominations will be considered if we receive all of the required information no later than 5 p.m., November 3, 2008.

**ADDRESSES:** Mail or deliver nominations to the following address: Division of DMEPOS Policy, Mail stop C5-08-17, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore MD, 21244-1850. Attention: Ralph Goldberg or Gina Longus. Nominations may also be e-mailed to [ralph.goldberg@cms.hhs.gov](mailto:ralph.goldberg@cms.hhs.gov) or [gina.longus@cms.hhs.gov](mailto:gina.longus@cms.hhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Ralph Goldberg, (410) 786-4870 or Gina Longus, (410) 786-1287. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

**SUPPLEMENTARY INFORMATION:****I. Background**

Payment for durable medical equipment (DME) is currently based on fee schedule amounts established using reasonable charge data from earlier years. Section 1847 of the Social Security Act (the Act) requires the Secretary to replace the current DME payment methodology for certain items with a competitive bidding process to improve the effectiveness of Medicare's methodology for setting DME payment amounts. This bidding process will establish payment for certain durable medical equipment, enteral nutrition, prosthetics, and off-the-shelf orthotics. In addition, section 1847(c) of the Act requires the Secretary to establish a Program Advisory and Oversight Committee (PAOC) to provide advice on the development and implementation of the program.

We established a PAOC pursuant to this statutory mandate, and the PAOC has provided advice in the development and implementation of the program to date. On July 15, 2008, Congress passed the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). Section 154 of MIPPA delays competition for Rounds 1 and 2 of the competitive bidding program and requires certain modifications to the program. Section 154(c)(2)(A) of MIPPA delays the termination date for the PAOC from December 31, 2009 to December 31, 2011.

The PAOC committee continues to have an important role in the implementation of the competitive bidding program. The PAOC members will need to review the previous bidding process and consider all of the MIPPA changes. Due to the length of the MIPPA delay and these additional duties, we have decided to end the term of service for the initial PAOC members and solicit nominees to serve for the next phase of the program.

**II. Goals, General Responsibilities, and Composition of the Program Advisory and Oversight Committee (PAOC)****A. Goals and General Responsibilities**

Section 1847(c)(3) of the Act requires the PAOC to provide advice to the Secretary on the following:

- The implementation of the program.
- The establishment of financial standards, taking into account the needs of small providers.

- The establishment of requirements for collection of data for the efficient management of the program.

- The development of proposals for efficient interaction among manufacturers, providers of services, suppliers, and individuals.

- The establishment of quality standards.

Section 1847(c)(3)(B) of the Act requires the PAOC to perform additional functions to assist the Secretary in implementing the program as the Secretary may specify. In accordance with section 1847(c)(5) of the Act, as amended by section 154 of MIPPA, the Committee will terminate on December 31, 2011. Committee meetings are expected to occur on an ad hoc basis. Committee meetings will be held in the Baltimore/Washington DC area. (We will reimburse travel expenses, which will be based on government per diem rates and travel policy.)

**B. Composition of the Program Advisory and Oversight Committee**

We have particular interest in individuals with expertise in DME, prosthetics, orthotics, or supplies (DMEPOS) and competitive bidding, as well as experience in furnishing services and items in the rural and the urban marketplace. The PAOC will be composed of 10 to 12 members from the following broad representation:

- Beneficiary/consumer representatives.
- Physicians and other practitioners.
- Suppliers.
- Professional standards organizations.
- Financial standards specialists (that is, economist/CPA).
- Association representatives.
- Other. (If you believe that representatives of other specialties or with other skills should be included on the committee, you may indicate the category or respective categories and you may nominate an individual for that category.)

**III. Submission of Nominations**

This notice is requesting nominations for membership on the PAOC. The Secretary will consider qualified individuals who are determined to have the expertise required to meet specific agency needs and who will ensure an appropriate balance of membership. Nominations may be made for one or more qualified individuals, and self-nominations will also be accepted. Each nomination must include the following:

1. A letter of nomination that includes both of the following:
  - a. Contact information for both the nominator and nominee (if not the same).

- b. The category, as specified in section II.B. of this notice for which the nomination is being made (for example, suppliers or association representatives).

2. A curriculum vitae or resume of the nominee that includes a statement of the nominee's current professional responsibilities (not to exceed five pages).

3. A statement that the nominee is willing to serve on the committee for its duration (that is, until December 31, 2011). This statement should also include a discussion of the nominee's relevant experience (not to exceed three pages). (For self-nominations, this information may be included in the nomination letter.)

**Authority:** Section 1847(c) of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E8-23159 Filed 10-1-08; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Resources and Services Administration****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call the HRSA Reports Clearance Office on 301-443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The National Health Service Corps Uniform Data System (OMB No. 0915-0232) Extension**

HRSA's Bureau of Clinician Recruitment and Service places National Health Service Corps (NHSC) health care professionals at sites that

provide services to underserved and vulnerable populations. The NHSC Uniform Data System report (UDS) is completed by sites that receive the placement of an NHSC provider, if those

sites are not currently receiving HRSA grant support. The NHSC UDS provides information that is utilized for monitoring and evaluation of program operations and effectiveness, and to

accurately report on the scope of supported activities.

The estimated annual burden is as follows:

| Instrument                | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---------------------------|-----------------------|--------------------------|-----------------|--------------------|--------------------|
| Uniform Data System ..... | 1,200                 | 1                        | 1,200           | 27                 | 32,400             |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA\_submission@omb.eop.gov* or by fax to 202-395-6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: September 26, 2008.

**Alexandra Huttinger**,  
 Director, Division of Policy Review and Coordination.  
 [FR Doc. E8-23222 Filed 10-1-08; 8:45 am]  
**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**National Advisory Council on Migrant Health; Notice of Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Migrant Health.  
*Dates and Times:* November 18, 2008, 8:30 a.m. to 5 p.m.; November 19, 2008, 8:30 a.m. to 5 p.m.  
*Place:* Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana 70130, Telephone: (504) 525-2500, Fax: (504) 595-5252.

*Status:* The meeting will be open to the public.  
*Purpose:* The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families and to formulate recommendations for the Secretary of Health and Human Services.  
*Agenda:* The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national levels.

In addition, the Council will be holding a public hearing at which migrant farmworkers, community leaders, and providers will have the opportunity to testify before the Council regarding matters that affect the health of migrant farmworkers. The

hearing is scheduled for Wednesday, November 19 from 9 a.m. to 12 p.m., at the Sheraton New Orleans Hotel.

The Council meeting is being held in conjunction with the Midwest Stream Farmworker Health Forum sponsored by the National Center for Farmworker Health, which is being held in New Orleans, Louisiana, November 19-22, 2008.

Agenda items are subject to change as priorities indicate.

*For Further Information Contact:* Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Maryland 20857; telephone (301) 594-0367.

Dated: September 26, 2008.

**Alexandra Huttinger**,  
 Director, Division of Policy Review and Coordination.  
 [FR Doc. E8-23228 Filed 10-1-08; 8:45 am]  
**BILLING CODE 4165-15-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Submission for OMB Approval; Comment Request; Extension of Approved Collection; Responsibility of Applicants for Promoting Objectivity in Research for Which Public Health Service Funding Is Sought, 42 CFR Part 50, Subpart F and for Responsible Prospective Contractors, 45 CFR Part 94 C**

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 14, 2008 (Vol. 73, No. 135, p. 40354-40355) and allowed 60-days for public comment. There were no public comments received during this time. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and

the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* Responsibility of Applicants for Promoting Objectivity in Research for which Public Health Service Funding is Sought and for Responsible Prospective Contractors, 42 CFR Part 50, Subpart F, and 45 CFR Part 94.

*Type of Information Collection Request:* Extension of OMB No. 0925-0417, expiration date November 30, 2008.

*Need and Use of the Information Collection:* This is a request for OMB Approval for the information collection and recordkeeping requirements contained in the final rule 42 CFR Part 50, Subpart F and related recordkeeping requirements regarding contractors in Responsible Prospective Contractors, 45 CFR Part 94. The purpose of these regulations is to promote objectivity in research by requiring institutions to establish standards to ensure that there is no reasonable expectation that the design, conduct, or reporting of research will be biased by a conflicting financial interest of an investigator.

*Frequency of Response:* On occasion.  
*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, Local or tribal government.

*Type of Respondents:* Any public or private entity or organization.

The annual reporting burden is as follows:

*Estimated Number of Respondents:* 67,860.

*Estimated Number of Responses Per Respondent:* 1.60;

*Averaged Burden Hours Per Response:* 3.40.; and

*Estimated Total Annual Burden Hours Requested:* 220,280.

The annualized cost to the public is estimated at \$8,120,000.

Operating Costs and/or maintenance costs are \$4,633.00.

TABLE—ESTIMATES OF HOUR BURDEN

| Type of respondents based on applicable section of regulation                           | Number of respondents | Frequency of response | Average burden hours per response | Annual hour burden |
|---|-----------------------|-----------------------|-----------------------------------|--------------------|
| <b>Reporting</b>  |                       |                       |                                   |                    |
| Initial Reports under 42 CFR § 50.604 (g)(2) or 45 CFR 94.4(g) (2) from Institutions.   | <sup>i</sup> 300      | 1                     | 80 Hours .....                    | 24000              |
| Subsequent Reports under 42 CFR § 50.604 (g)(2) or 45 CFR 94.4(g)(2) from Institutions. | <sup>ii</sup> 40      | 1                     | 2 Hours .....                     | 80                 |
| Subsequent Reports under 42 CFR § 50.606 (a) or 45 CFR 94.6 from Institutions.          | <sup>iii</sup> 20     | 1                     | 10 Hours .....                    | 200                |
| <b>Record Keeping</b>   |                       |                       |                                   |                    |
| Under 42 CFR § 50.604 (e) or 45 CFR 94.4 (e)—Institutional files.                       | <sup>iv</sup> 25000   | 1                     | 4 Hours .....                     | 100000             |
| <b>Disclosure</b>   |                       |                       |                                   |                    |
| Under 42 CFR § 50.604(a) or 45 CFR 94.4 (a)—Institutions                                | <sup>v</sup> 2800     | 1                     | 20 Hours .....                    | 56000              |
| Under 42 CFR § 50.604(c) or 45 CFR 94.4 (c)—Investigators.                              | <sup>vi</sup> 40000   | 1                     | 1 Hour .....                      | 40000              |
| Totals .....  | 68160                 | .....                 | .....                             | 220280             |

<sup>i</sup> Although not more than 300 reports of Conflict of Interest are expected, the responding institutions must review all financial disclosures associated with PHS funded awards to determine whether any conflicts of interest exist. Thus, the total burden of 24,000 hours is based upon estimates that it will take on the average 4/5 of an hour to review each of 30,000 financial disclosures associated with PHS funding awards. (30,000 x 48 (minutes per file) = 1,440,000 ÷ 60 minutes = 24,000 (total hours).

<sup>ii</sup> The burden for subsequent reports of conflicts (made during the 12 month period following the initial report) is significantly less, because we do not expect may additional reportable conflicts and there will be only a limited number of disclosures to review.

<sup>iii</sup> This burden was originally estimated in the 1995 Final Rule to be no more than 5 instances that the failure of an investigator to comply with the institution's conflict of interest policy has biased the design, conduct or reporting of the research. "Objectivity in Research, Final Rule" 60 FR 132 (July 11, 1995) pps. 35810–35819. This burden estimate and others was increased in 2002 "due to increased numbers of institutions and investigators."

<sup>iv</sup> Assumes 2500 Institutions, 10 responses per year per institution.

<sup>v</sup> Assumes 2800 recipient Institutions and 20 hours per institution informing each investigator of institutional policy.

<sup>vi</sup> The financial disclosure burden estimate is based upon an investigator figure of 40,000 with an average response time of 1 hour. The estimated number of investigators has not changed since the 2002 Information Collection Request associated with the Final Rule. These estimates are for the burden imposed by disclosure, reporting and recordkeeping requirements. Not all activities of institutions related to conflict of interest result from regulations.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate 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) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of

Management and Budget, at *OIRA\_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans contact: Ms. Mikia Currie, Assistant Project Clearance Officer, Office of Extramural Research, (OER), Office of Policy for Extramural Research Administration, (OPERA), 6705 Rockledge Drive, Room 1198, Bethesda, MD 20892–7974, or call non-toll-free number 301–435–0941 or E-mail your request, including your address, to: *curriem@od.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 25, 2008.

**Joe Ellis,**

*Director, Office of Policy of Extramural Research Administration, National Institutes of Health.*

[FR Doc. E8–23171 Filed 10–1–08; 8:45 am]

**BILLING CODE 4140–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel. IBD, Vaccinia Epitopes and NASH.

*Date:* October 14, 2008.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, [haydenb@csr.nih.gov](mailto:haydenb@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Microbiology.

*Date:* October 14, 2008.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Marian Wachtel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301-435-1148, [wachtelm@csr.nih.gov](mailto:wachtelm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Genetic Pathways and Tumor Suppression.

*Date:* October 15, 2008.

*Time:* 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301-451-0131, [chatterm@csr.nih.gov](mailto:chatterm@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group Genetic Variation and Evolution Study Section.

*Date:* October 16-17, 2008.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 Twenty-Fifth Street, Washington, DC 20037.

*Contact Person:* David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301-435-1038, [remondid@csr.nih.gov](mailto:remondid@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, CMBK Member Conflicts Review.

*Date:* October 16, 2008.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301-451-1325, [ryssokok@csr.nih.gov](mailto:ryssokok@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflicts: Information Processing.

*Date:* October 20-21, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435-1713, [melchioc@csr.nih.gov](mailto:melchioc@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member SEP for GCAT and GVE.

*Date:* October 20, 2008.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301-435-3565, [svedam@csr.nih.gov](mailto:svedam@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Child Psychopathology and Developmental Disorders.

*Date:* October 20, 2008.

*Time:* 2:15 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Estina E. Thompson, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178,

MSC 7848, Bethesda, MD 20892, 301-496-5749, [thompson@mail.nih.gov](mailto:thompson@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Studies in Reproductive Endocrinology.

*Date:* October 21-22, 2008

*Time:* 8:30 a.m. to 8:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Syed M. Amir, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301-435-1043, [amirs@csr.nih.gov](mailto:amirs@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Immune Mechanisms.

*Date:* October 21-22, 2008

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Jian Wang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7812, Bethesda, MD 20892, (301) 435-2778, [wangjia@csr.nih.gov](mailto:wangjia@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflicts in Cognition, Language and Memory.

*Date:* October 21, 2008

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301-435-2309, [pluded@csr.nih.gov](mailto:pluded@csr.nih.gov).

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience, Integrated Review Group Cellular and Molecular Biology of Neurodegeneration Study Section.

*Date:* October 23-24, 2008.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

*Contact Person:* Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301-435-1203, [taupenok@csr.nih.gov](mailto:taupenok@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Radiation Oncology.

*Date:* October 23, 2008.

*Time:* 1 p.m. to 5 p.m.  
*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435-2477, [zargerma@csr.nih.gov](mailto:zargerma@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Electromagnetic Devices.

*Date:* October 23, 2008.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301-435-2592, [sastrea@csr.nih.gov](mailto:sastrea@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Clinical Hematology.

*Date:* October 24, 2008.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301-435-2506, [tangd@csr.nih.gov](mailto:tangd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, NRSA Fellowships in Genes, Genomics and Genetics.

*Date:* October 26-27, 2008.

*Time:* 6 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mary P. McCormick, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301-435-1047, [mccormim@csr.nih.gov](mailto:mccormim@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Development Methods of In Vivo Imaging and Bioengineering Research.

*Date:* October 27, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435-2409, [shabestb@csr.nih.gov](mailto:shabestb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Non-HIV Microbial Vaccine Development.

*Date:* October 27, 2008.

*Time:* 8 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301-435-1230, [jh377p@nih.gov](mailto:jh377p@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BTSS Member Conflict.

*Date:* October 27, 2008.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435-2204, [matusr@csr.nih.gov](mailto:matusr@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, VMD Member Conflict.

*Date:* October 27, 2008.

*Time:* 3:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301-435-1230, [jh377p@nih.gov](mailto:jh377p@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Hematopoietic Stem Cell Regulation.

*Date:* October 27, 2008.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435-1233, [shahb@csr.nih.gov](mailto:shahb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Oral and Dental: Small Business Special Emphasis Panel.

*Date:* October 28-29, 2008.

*Time:* 8 a.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 401 6K, MSC 7814 Bethesda, MD 20892, 301-451-1327, [tthyagar@csr.nih.gov](mailto:tthyagar@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Drug Development and Therapeutics, SBIR/STTR.

*Date:* October 28-29, 2008.

*Time:* 11 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Hungyi Shau, PHD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301-435-1720, [shauhungcsr@nih.gov](mailto:shauhungcsr@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Diagnostics and Treatment SBIR.

*Date:* October 28-29, 2008.

*Time:* 11 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301-435-1779, [riverase@csr.nih.gov](mailto:riverase@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Confocal Microscopy Shared Instrumentation.

*Date:* October 29-30, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, [balasundaramd@csr.nih.gov](mailto:balasundaramd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Organ Systems.

*Date:* October 29, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301-435-2365, [aitouchea@csr.nih.gov](mailto:aitouchea@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Vascular Biology Special Emphasis Panel.

*Date:* October 29-30, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095J, MSC 7822, Bethesda, MD 20892, (301) 435-1233, [shahb@csr.nih.gov](mailto:shahb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Complex Human Genetics.

*Date:* October 30–31, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435-1147, [mkschmidt@mail.nih.gov](mailto:mkschmidt@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Organ Systems—Cardiovascular, Pulmonary, and Hematology.

*Date:* October 30, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel & Executive Meeting Center, 8130 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301-435-2365, [aitouchea@csr.nih.gov](mailto:aitouchea@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Biology and Therapy Pilot Studies.

*Date:* October 30–31, 2008.

*Time:* 8 a.m. to 9 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301-435-1048, [watsonjo@csr.nih.gov](mailto:watsonjo@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Oncology Fellowship.

*Date:* October 30, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

*Contact Person:* Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451-4467, [choe@csr.nih.gov](mailto:choe@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis, Panel Software Maintenance and Extension.

*Date:* October 30, 2008.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

*Contact Person:* George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301-435-1245, [chackoge@csr.nih.gov](mailto:chackoge@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR Applications for Health of the Population (HOP) IRC.

*Date:* October 30, 2008.

*Time:* 8:30 a.m. to 7 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

*Contact Person:* Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301-435-1017, [helmersk@csr.nih.gov](mailto:helmersk@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Community Participation Research Targeting the Medically Underserved.

*Date:* October 30, 2008.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

*Contact Person:* William N. Elwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435-1503, [elwoodwi@csr.nih.gov](mailto:elwoodwi@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Endocrinology and Reproductive Sciences.

*Date:* October 30, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435-1041, [krishnak@csr.nih.gov](mailto:krishnak@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Infectious Agent Detection/Diagnosis, Food Safety, Sterilization/Disinfection and Bioremediation.

*Date:* October 31, 2008.

*Time:* 7:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Fisherman's Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.

*Contact Person:* Fouad A. El-Zaatar, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814-9692, (301) 435-1149, [elzaataf@csr.nih.gov](mailto:elzaataf@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Dental and Enamel: Developmental Biology, Special Emphasis Panel.

*Date:* October 31, 2008.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016K, MSC 7814, Bethesda, MD 20892, 301-451-1327, [tthyagar@csr.nih.gov](mailto:tthyagar@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Quick Trials on Imaging and Image-guided Intervention.

*Date:* October 31, 2008.

*Time:* 11 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

*Contact Person:* John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301-435-2598, [firrellj@csr.nih.gov](mailto:firrellj@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 22, 2008.

**Jennifer Spaeth**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22843 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 16, 2008, 8 a.m. to October 16, 2008, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 17, 2008, 73 FR 53880-53882.

The meeting will be held at the Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time

remain the same. The meeting is closed to the public.

Dated: September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22849 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Musculoskeletal Rehabilitation Sciences Study Section, October 9, 2008, 8 a.m. to October 10, 2008, 4 p.m., Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA, 22314 which was published in the **Federal Register** on September 17, 2008, 73 FR 53880-53882.

The meeting will be held October 16, 2008 to October 17, 2008. The meeting time and location remains the same. The meeting is closed to the public.

Dated: September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22850 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of 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:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical

and Integrative Diabetes and Obesity Study Section.

*Date:* October 2, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046-E, MSC 7892, Bethesda, MD 20892, (301) 435-1154, [sheardn@csr.nih.gov](mailto:sheardn@csr.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22851 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Cancer Genetics Study Section, October 9, 2008, 8 a.m. to October 9, 2008, 5 p.m., Le Meridien San Francisco, 333 Battery Street, San Francisco, CA, 94111 which was published in the **Federal Register** on September 19, 2008, 73 FR 54408-54411.

The meeting will be held October 9, 2008 to October 10, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: September 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-23182 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the Center for Scientific

Review Special Emphasis Panel, October 24, 2008, 8 a.m. to October 25, 2008, 5 p.m., Holiday Inn-Express Hotel and Suites, San Francisco Fisherman's Wharf, 550 North Point Street, San Francisco, CA, 94133 which was published in the **Federal Register** on September 19, 2008, 73 FR 54408-54411.

The meeting will be held one day only October 24, 2008: The meeting time and location remain the same. The meeting is closed to the public.

Dated: September 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-23183 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

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 Heart, Lung, and Blood Institute, 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, NHLBI.

*Date:* October 20, 2008.

*Time:* 9 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Robert S Balaban, PhD, Scientific Director, Division of Intramural Research, National Institutes of Health, NHLBI, Building 10, CRC, 4th Floor, Room 1581, 10 Center Drive, Bethesda, MD 20892, (301) 496-2116.

Information is also available on the Institute's/Center's home page: <http://www.nhlbi.nih.gov/meetings/index.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 18, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22653 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* October 21, 2008.

*Open:* 8 a.m. to 12 p.m.

*Agenda:* To discuss program policies and issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Closed:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Stephen Mockrin, PhD, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood

Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435-0260, *mockrins@nhlbi.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.nhlbi.nih.gov/meetings/index.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 18, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22651 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Research Projects in Red Blood Cells.

*Date:* October 17, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Churchill Hotel, 1914 Connecticut Ave., Washington, DC 20009.

*Contact Person:* Charles Joyce, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892-7924, 301-435-0288, *cjoyce@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health HHS)

Dated: September 18, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22650 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Heart, Lung, and Blood Institute; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Scientist Awards (K99's).

*Date:* October 22, 2008.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Virginian Suites, 1500 Arlington Blvd, Arlington, VA 22209.

*Contact Person:* Holly K Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0280, *krullh@nhlbi.nih.gov*.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Small Research Grants (R03's).

*Date:* October 27-28, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Charles Joyce, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892-7924, 301-435-0288, [cjoyce@nhlbi.nih.gov](mailto:cjoyce@nhlbi.nih.gov).

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Program Project in Pulmonary Injury.

*Date:* October 29, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Shelley S Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892-7924, 301-435-0303, [ssehnert@nhlbi.nih.gov](mailto:ssehnert@nhlbi.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

*Dated:* September 23, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22848 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special

Emphasis Panel; Review RFA DE-08-1 17 P01s.

*Date:* December 3, 2008.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, Bethesda, MD 20817.

*Contact Person:* Jonathan Horsford, PhD, Scientific Review Officer, Natl. Inst. of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd, Room 664, Bethesda, MD 20892, 301-594-4859, [horsforj@mail.nih.gov](mailto:horsforj@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

*Dated:* September 18, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22652 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Research Centers Meeting (ADRC).

*Date:* October 28-29, 2008.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Legacy Hotel Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7704, [crucew@nia.nih.gov](mailto:crucew@nia.nih.gov).

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Sex Differences in Health and Longevity I.

*Date:* November 10, 2008.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue Rm. 20212, Bethesda, MD 20814. (Telephone Conference Call)

*Contact Person:* Ramesh Vemuri, PhD, Chief Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 20-212, Bethesda, MD 20892, 301-402-7700, [rv23r@nih.gov](mailto:rv23r@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

*Dated:* September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22844 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immune Cells in Hepatic Injury and Transplantation.

*Date:* October 23, 2008.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases  
Research, National Institutes of Health, HHS)

Dated: September 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. E8-22846 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

*Date:* October 24, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-496-3528, [gm12w@nih.gov](mailto:gm12w@nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; CFAR.

*Date:* November 13-14, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-594-0985, [vijhs@niaid.nih.gov](mailto:vijhs@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases  
Research, National Institutes of Health, HHS)

Dated: September 19, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. E8-22847 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Vaccine Research Center Board of Scientific Counselors, NIAID.

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 Allergy and Infectious Diseases, 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:* Vaccine Research Center Board of Scientific Counselors, NIAID.

*Date:* October 28, 2008.

*Time:* 9 a.m. to 3 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Vaccine Research Center, 40 Convent Drive, Conference Room #1207, Bethesda, MD 20892.

*Contact Person:* Gary J Nabel, MD, PhD, Director, Vaccine Research Center, NIAID/NIH, 40 Convent Drive, Bldg 40, Room 4502, Bethesda, MD 20892, 401-496-1852, [glabel@niaid.nih.gov](mailto:glabel@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. E8-22852 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Orthopaedic Clinical Trials.

*Date:* October 22, 2008.

*Time:* 9:30 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Kan Ma, Scientific Review Administrator, NIH/NIAMS, EP Review Branch, One Democracy Plaza Suite 800, Bethesda, MD 20892-4872, 301-594-4952, [mak2@mail.nih.gov](mailto:mak2@mail.nih.gov).

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Skeletal Repair Review Meeting.

*Date:* November 4, 2008.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael L. Bloom, PhD, MBA, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd, Bethesda, MD 20892-4872, 301-594-4953, [Michael\\_Bloom@nih.gov](mailto:Michael_Bloom@nih.gov).

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Musculoskeletal Diseases.

*Date:* November 6-7, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washingtonian Center Courtyard, Gaithersburg, 204 Boardwalk Place, Gaithersburg, MD 20874.

*Contact Person:* Charles H Washabaugh, PhD, Scientific Review Administrator,

Review Branch, NIAMS/NIH, 6701 Democracy Blvd, Room 816, Bethesda, MD 20892, 301-451-4838, [washabac@mail.nih.gov](mailto:washabac@mail.nih.gov).

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Orthopedic Trials.

*Date:* December 9, 2008.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Charles H Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd, Room 816, Bethesda, MD 20892, 301-451-4838, [washabac@mail.nih.gov](mailto:washabac@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-23167 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Mental Health; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Novel Interventions for Neurodevelopmental Disorders.

*Date:* November 5, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

*Contact Person:* Megan Libbey, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852, 301-402-6807, [libbeym@mail.nih.gov](mailto:libbeym@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, NRSA Institutional Research Training—Clinical.

*Date:* November 7, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

*Contact Person:* Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-1225, [aschulte@mail.nih.gov](mailto:aschulte@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Novel Neuroaids Therapies: Integrated Preclinical/Clinical Program (IPCP).

*Date:* November 10, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* David M. Armstrong, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6138/MSB 9608, 6001 Executive Boulevard, Bethesda, MD 20892-9608, 301-443-3534, [armstrda@mail.nih.gov](mailto:armstrda@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-23169 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Office of the Director, National Institutes of Health; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space

available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* October 31, 2008.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* Key topics for this meeting will focus on emerging issues of public importance in biomedical and behavioral research. Further information will be available on the COPR Web site in the middle of October at <http://www.copr.nih.gov>.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20852.

*Contact Person:* Kelli L. Carrington, Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, 301-594-4575, [carringk@mail.nih.gov](mailto:carringk@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.copr.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 23, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22845 Filed 10-1-08; 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; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Office of AIDS Research Advisory Council.

*Date:* October 24, 2008.

*Time:* 1:30 p.m. to 5 p.m.

*Agenda:* The theme of the meeting will be "Nutrition and the Clinical Management of HIV." An update will be provided on the OARAC Working Groups for Treatment and Prevention Guidelines.

*Place:* Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

*Contact Person:* Christina Brackna, Coordinator, Program Planning and Analysis, Office of AIDS Research, Office of the Director, NIH, 5635 Fishers Lane MSC 9310, Suite 4000, Rockville, MD 20852, (301) 402-8655, [cm53v@nih.gov](mailto:cm53v@nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.nih.gov/od/oar/index.htm>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 22, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-22842 Filed 10-1-08; 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; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee on Research on Women's Health.

*Date:* October 30, 2008.

*Time:* 9 a.m. to 4:30 p.m.

*Agenda:* Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

*Place:* National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402-1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www4.od.nih.gov/orwh/>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired

Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 25, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8-23185 Filed 10-1-08; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1795-DR]

**Indiana; Major Disaster and Related Determinations**

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA-1795-DR), dated September 23, 2008, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:**

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 23, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms and flooding beginning on September 12, 2008, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation

and Other Needs Assistance will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen M. DeBlasio Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Indiana have been designated as adversely affected by this declared major disaster:

Lake, LaPorte, and Porter Counties for Individual Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036; Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–23255 Filed 10–1–08; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[FEMA–1794–DR]

**Mississippi; Major Disaster and Related Determinations**

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1794–DR), dated September 22, 2008, and related determinations.

**DATES:** *Effective Date:* September 22, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 22, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from Hurricane Gustav during the period of August 28 to September 8, 2008, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this declared major disaster:

Adams, Amite, Claiborne, Copiah, Forrest, Franklin, George, Hancock, Harrison, Jackson, Jefferson, Jefferson Davis, Lawrence, Lincoln, Marion, Pearl River, Pike, Stone, Walthall, and Wilkinson Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036; Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8–23255 Filed 10–1–08; 8:45 am]

**BILLING CODE 9111–23–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[FEMA–1785–DR]

**Florida; Amendment No. 10 to Notice of a Major Disaster Declaration**

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1785–DR), dated August 24, 2008, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:**

Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2008.

Martin County for Individual Assistance. Alachua, Gadsden, and Liberty Counties for Individual Assistance (already designated for Public Assistance).

Lee County for Public Assistance (already designated for Individual Assistance).

[The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036; Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.]

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E8-23254 Filed 10-1-08; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5187-N-54]

**Customer Satisfaction Surveys**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been 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.

HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

**DATES:** *Comments Due Date:* November 3, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535-0116) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:**

Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian\_L\_Deitzer@HUD.gov* or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Customer Satisfaction Surveys.

*OMB Approval Number:* 2535-0116.

*Form Numbers:* None.

*Description of the Need for the Information and its Proposed Use:* HUD will conduct various customer satisfaction surveys to gather feedback and data directly from our customers to determine the kind and quality of services and products they want and expect to receive.

*Frequency of Submission:* On occasion.

|                         | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|-------------------------|-----------------------|------------------|---|--------------------|---|--------------|
| Reporting Burden: ..... | 117,248               | 1                |   | .112               |   | 13,229       |

*Total Estimated Burden Hours:* 13,229.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 25, 2008.

**Lillian L. Deitzer,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8-23172 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5187-N-55]

**Request for Credit Approval of Substitute Mortgagor**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been 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.

A buyer may assume an FHA-insured mortgage by becoming the substitute mortgagor through the credit approval process. Prior to releasing a seller from liability on the mortgage note or for mortgages after December 15, 1989, HUD or a Direct Endorsement (DE) lender must review the credit of the assumer and record the approval.

**DATES:** *Comments Due Date:* November 3, 2008.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0036) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian.Deitzer@HUD.gov or telephone (202) 402-8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**This Notice Also Lists the Following Information**

*Title of Proposal:* Request for Credit Approval of Substitute Mortgagor.  
*OMB Approval Number:* 2502-0036.  
*Form Numbers:* HUD-92210 Request for Credit Approval of Substitute Mortgagor, HUD-92210.1 Approval of Purchaser and Release of Seller, HUD-92900-A HUD/VA Addendum to Uniform Residential Loan Application.  
*Description of the Need for the Information and its Proposed Use:* A buyer may assume an FHA-insured mortgage by becoming the substitute mortgagor through the credit approval process. Prior to releasing a seller from liability on the mortgage note or for Mortgages after December 15, 1989, HUD or a Direct Endorsement (DE) lender must review the credit of the assumer and record the approval.  
*Frequency of Submission:* On occasion.

|                        | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|------------------------|-----------------------|---|------------------|---|--------------------|---|--------------|
| Reporting Burden ..... | 100                   |   | 4                |   | 2                  |   | 800          |

*Total Estimated Burden Hours:* 800.  
*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 25, 2008.

**Lillian L. Deitzer,**  
*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E8-23174 Filed 10-1-08; 8:45 am]  
**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5191-N-30]

**Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans**

**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:* December 1, 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:** Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-1672 x2419 (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:* FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans.

*OMB Control Number, if applicable:* 2502-NEW.

*Description of the need for the information and proposed use:* FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also

serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums. The information collection request for OMB review seeks to combine the requirements of one existing OMB collection under this collection; and is as follows OMB collection 2502-0235.

*Agency form numbers, if applicable:* None.

*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 number of burden hours is 1,500,234, the number of respondents is 4,441, the number of responses is 34,497,153, the frequency of response is on occasion, and the burden hour per response is from less than a minute to 40 hours depending upon the activity.

*Status of the proposed information collection:* This is a new collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 24, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. E8-23208 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-31]

### Notice of Proposed Information Collection: Comment Request; Home Equity Conversion Mortgage Counseling Client Survey

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* December 1, 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, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street,

SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or [Lillian\\_Deitzer@hud.gov](mailto:Lillian_Deitzer@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Betsy Cromwell, Office of Single Family Program Support Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-4465 (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:* Home Equity Conversion Mortgage Counseling Client Survey.

*OMB Control Number, if applicable:* 2502-NEW.

*Description of the need for the information and proposed use:* As a condition of eligibility to receive a Home Equity Conversion Mortgage (HECM), consumers must participate in reverse mortgage counseling. As part of HUD's evaluation of its HECM counseling program, performance reviews are conducted at the HUD-approved counseling agencies by HUD staff. HUD staff mails or e-mails, when an e-mail address is available, the HECM client survey to consumers who have recently received counseling through the agency. This survey is completed by the consumer and mailed or e-mailed back to HUD. It provides valuable feedback to HUD regarding customer service and counseling quality provided by the HECM counseling agency being reviewed. HUD uses this information to evaluate the counseling

agency and, further, to make any policy or procedural changes as necessary.

*Agency form numbers, if applicable:* HUD-92911.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated total number of hours needed to prepare the information collection is 84, the number of respondents is 500 generating approximately 500 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 10 minutes to 20 minutes.

*Status of the proposed information collection:* This is new information collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 24, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.*

[FR Doc. E8-23209 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-27-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-26]

### Notice of Proposed Information

*Collection:* Comment Request; Master Appraisal Reports (MARS)

**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:* December 1, 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](mailto: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:* Master Appraisal Report (MARS).

*OMB Control Number, if applicable:* 2502-0493.

*Description of the need for the information and proposed use:* Master Appraisal Report (MAR) permits the listing of model, which includes eh base value that cover the different types of individual homes and streamlined the reporting process.

*Agency form numbers, if applicable:* HUD-91322, HUD-91222.1, HUD-91322.2, HUD-91322.3.

*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 number of burden hours is 805. The number of respondents is 3,710, the number of responses is 3,710, the frequency is on occasion and the burden hour per response is approximately 1.5 hours.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 24, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. E8-23202 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-29]

### Notice of Proposed Information Collection: Comment Request; Multifamily Housing Procedures for Projects Affected by Presidentially-Declared Disasters

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* December 1, 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 Dietzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or [Lillian\\_L\\_Dietzer@hud.gov](mailto:Lillian_L_Dietzer@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Brandt Witte, Housing Program Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402-2614 (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:* Multifamily Housing Procedures for Projects Affected by Presidentially-Declared Disasters.

*OMB Control Number, if applicable:* New Collection-No Number Assigned.

*Description of the need for the information and proposed use:* The purpose of this information collection is to ensure that owners follow HUD procedures regarding recovery efforts after a Presidentially-declared disaster.

*Agency form numbers, if applicable:* None.

*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 number of burden hours is estimated to be 393. The number of respondents is 29,281, the frequency of response is 1, the number of responses is based on the average number of declared disasters within the last three years (averaged at 54 per year), and the total burden hours per response is 7.25.

*Status of the proposed information collection:* This is a new collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 24, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant, Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. E8-23207 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-27]

### Notice of Proposed Information Collection: Comment Request Procedures for Appealing Section 8 Rent Adjustments

**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:* December 1, 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](mailto:Lillian.L.Deitzer@HUD.gov) or telephone (202)402-8048.

**FOR FURTHER INFORMATION CONTACT:** Program Contact, Director, Office of Housing, Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-3000 (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 Section 8 rent appeal process. (2) Evaluate whether to continue the quality of appeal that rendered the initial rent adjustment decision made to local HUD Office or Contract Administrator and Section appeals to HUD Director, who will designate to an Officer to review any appeal.

This Notice also lists the following information:

*Title of Proposal:* Procedure for Appealing Section 8 Rent Adjustments.  
*OMB Control Number, if applicable:* 2502-0446 Extension.

*Description of the need for the information and proposed use:* HUD is charged with the responsibility of determining the method of rent adjustments and with facilitating these adjustments. Because rent adjustments are considered benefits to project owners, HUD must also provide some means for owners to appeal the decisions made by the Department or the Contract Administrator. This appeal process, and the information collection included as part of the process, play an important role in preventing costly litigation and in ensuring the accuracy of the overall rent adjustment process.

*Agency form numbers, if applicable:* Owners will submit rent appeal on owner's letterhead providing a written explanation for the appeal.

*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 number of burden hours is 800. The number of respondents is 400 the number of responses is 400, the frequency of response is on occasion, and the burden hour per response is 2.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 22, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. E8-23204 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5191-N-28]

### Notice of Proposed Information Collection: Comment Request; Telecommunications Services in Multifamily Housing Projects

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, 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:* December 1, 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 Dietzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or [Lillian.L.Dietzer@hud.gov](mailto:Lillian.L.Dietzer@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Kimberly R. Munson, Housing Program Manager, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708-1320 (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:* Telecommunications Services in Multifamily Housing Projects

*OMB Control Number, if applicable:*

*Description of the need for the information and proposed use:* The purpose of this information collection is to ensure that owners/agents and telecommunications providers comply with HUD requirements when providing telecommunications services to tenants in multifamily housing projects..

*Agency form numbers, if applicable:* None.

*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 burden hours is 336,617. The estimated number of respondents is 2,545,300, estimated number of responses is 346,162, the frequency of response varies, and the estimated burden hours per response is 6.25.

*Status of the proposed information collection:* This is new collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 24, 2008.

**Ronald Y. Spraker,**

*Acting General Deputy Assistant Secretary for Housing Deputy Federal Housing Commissioner.*

[FR Doc. E8-23205 Filed 10-1-08; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R2-ES-2008-N0024; 20124-1113-0000-F2]

**CT 620 Partnership Incidental Take Permit Amendment****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability and 30-day public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received from CT 620 Partnership (Applicant) a request to amend an existing Incidental Take Permit (Permit), TE036095, under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). If we grant it, the amendment would update the methodology we used to calculate the mitigation fee for this permit to the methodology we presently use to calculate new fees for permits of this type. This amendment would not alter the level of authorized take.

**DATES:** To ensure consideration, we must receive any written comments on or before November 3, 2008.

**ADDRESSES:** Persons wishing to review the amendment request may obtain copies by calling or faxing the U.S. Fish and Wildlife Service Austin Office, 10711 Burnet Road, Suite 200, Austin, TX 78758 (512/490-0057, voice; 512/490-0974, fax). The amendment request will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the above office. During the 30-day public comment period, written comments or data should be submitted to the Field Supervisor at the above address. Please refer to TE-036095-1 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor (contact information above).

**Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information-may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from

organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Background**

We issued CT 620's original incidental take permit on April 30, 2001, for a 30-year period (to last until April 30, 2031). Prior to issuing this permit, we published a notice of availability and request for comments on the proposed permit, an environmental assessment, and a habitat conservation plan in the **Federal Register** on December 26, 2000 (65 FR 81540). The requested amendment to the permit would not change the length or terms of the permit, other than changing the required mitigation fee to align with the Service's current policy to use the methodology adopted by the Balcones Canyonlands Preserve in July 2007. CT 620's Permit allows for incidental take of golden-cheeked warbler habitat during the construction of nine residences on portions of 50.08 acres on Hughes Park Road near RR 620, Austin, Travis County, Texas. The development will eliminate approximately 16 acres of GCWA habitat. Under the current permit, CT 620 must pay a mitigation fee of \$304,000 to Travis County to be used by the Balcones Canyonlands Preserve for the purchase and preservation of 32 acres (at a cost of \$9,500 per acre) of GCWA habitat before construction the property begins. CT 620 is requesting that the mitigation fee be recalculated at a fee of \$5,000 per acre which was adopted in July 2007. The new mitigation fee to purchase 32 acres would be \$160,000.

Section 9 of the Act prohibits the "taking" of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Benjamin N. Tuggle,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. E8-23242 Filed 10-1-08; 8:45 am]

**BILLING CODE 4310-55-P****DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****Colorado River Basin Salinity Control Advisory Council****AGENCY:** Bureau of Reclamation, Interior.**ACTION:** Notice of public meeting.

**SUMMARY:** The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93-320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

**DATES AND LOCATION:** The Council will conduct its meeting at the following time and location:

Wednesday, October 29, 2008—San Diego, California—The meeting will be held at the Bahia Resort Hotel, 998 W. Mission Bay Drive. The meeting will begin at 9 a.m., recess at approximately 2 p.m., and reconvene briefly the following day at 1 p.m.

**ADDRESSES:** The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1147; telephone (801) 524-3753; facsimile (801) 524-3826; e-mail at: [kjacobson@uc.usbr.gov](mailto:kjacobson@uc.usbr.gov) at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Kib Jacobson, telephone (801) 524-3753; facsimile (801) 524-3826; e-mail at: [kjacobson@uc.usbr.gov](mailto:kjacobson@uc.usbr.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land

Management, U.S. Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

#### Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 10, 2008.

**Wayne Xia,**

*Acting Regional Director—UC Region, Bureau of Reclamation.*

[FR Doc. E8-23106 Filed 10-1-08; 8:45 am]

**BILLING CODE 4310-MN-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 12, 2008, a proposed consent decree (the "Decree") in *United States and State of Oregon v. Truax Oil, Inc.*, Civil Action No. 3:08-cv-01063-KI, was lodged with the United States District Court for the District of Oregon.

In this action the United States and State of Oregon sought civil penalties for Defendant Truax Oil's spill of approximately 11,000 gallons of oil from a tanker truck owned and operated by Truax. Truax owns and operates a liquid petroleum transport company based in Corvallis, Oregon. On March 11, 2006, a tanker truck owned and operated by Truax carrying approximately 9,000 gallons of gasoline and 2,000 gallons of diesel fuel overturned while traveling on U.S. Highway 5, at Milepost 118, near Roseburg, Oregon. Gasoline and diesel that did not ignite in the ensuing fire spilled into a soil embankment beside the highway and migrated to an unnamed tributary to Roberts Creek, a tributary of the South Fork of the Umpqua River. Truax's discharge of gasoline and diesel to the Umpqua River and its tributaries violated the Clean Water Act and Oregon law. Under the

consent decree, Truax will pay the United States and the State of Oregon civil penalties of \$117,500 and \$20,000, respectively.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication 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](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States and State of Oregon v. Truax Oil, Inc.*, Civil Action No. 3:08-cv-01063-KI, D.J. Ref. 90-5-1-1-09015.

The consent decree may be examined at the Office of the United States Attorney, Mark O. Hatfield U.S. Courthouse, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. 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/ConsentDecrees.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](mailto:tonia.fleetwood@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.00 (25 cents per page reproduction cost) payable to the U.S. 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 Chief, Environmental Enforcement Section Environment and Natural Resources Division.*

[FR Doc. E8-23092 Filed 10-1-08; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on August 14, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement

Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, California Portland Cement Company, Glendale, CA; CPC Terminals, Glendale, AZ; and Arizona Portland Cement Co., Phoenix, AZ have changed their names to CalPortland, Glendale, CA. In addition, MikroPul, Charlotte, NC has become an Associate Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on February 25, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 24, 2008 (73 FR 15538).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E8-23055 Filed 10-1-08; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petition for Modification

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of petition for modification of an existing mandatory safety standard.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of a petition for modification filed by the party listed below to modify the application of an existing mandatory safety standard published in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petition must be received by the Office of Standards, Regulations, and Variances on or before November 3, 2008.

**ADDRESSES:** You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile: 1-202-693-9441.*
3. *Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.*
4. *Hand-Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.*

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copy of the petition and comments during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), [barron.barbara@dol.gov](mailto:barron.barbara@dol.gov) (E-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers.]

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modifications.

##### **II. Petitions for Modification**

*Docket Number:* M-2008-044-C.  
*Petitioner:* Summit Engineering, Inc., P.O. Box 130, 3016 Rt. 10, Chapmanville, West Virginia 25508 on behalf of INR-WV Operating, LLC.

*Mine:* Saunders Prep. Plant, MSHA I.D. No. 46-02140, located in Logan County, West Virginia.

*Regulation Affected:* 30 CFR 77.214(a) (Refuge piles; general).

*Modification Request:* The petitioner requests a modification of the existing standard which prohibits refuse piles to be located over abandoned openings to permit abandoned mine openings to be backfilled with inert non-acid producing soil. The petitioner states that: (1) The soil will extend approximately 25 feet into the mine and at least 4 feet in all directions beyond the limits of the mine opening; (2) the existing mine openings are within the foot print of INR's North Rock Refuse Area; (3) the mine openings are from the Buffalo Mining Company's No. 5 Mine; (4) production at the mine ceased in 1972 and has been abandoned since then; and (5) mine openings within the foot print are up-dip from additional openings outside of the foot print of the refuse area, and are dry. The petitioner further states that: (1) There is significant flow coming out of mine openings down-dip from the refuse area; (2) the entries down-dip of the refuse areas will be left open to allow drainage to continue and not impound water; (3) any exposed coal seam along the mine bench will be covered with soil to at least 4 feet above the seam; (4) a riprap rock underdrain connected to the underdrain of the refuse fill will be installed along the mine openings consisting of durable sandstone wrapped in filter fabric; (5) one 12-inch SDR-11 high density polyethylene pipe will be placed at the mine opening with the lowest elevation; (6) the combination of the underdrain and pipe will serve to handle localized drainage; and (7) breaker rock coal refuse will be placed in the fill in accordance with the approved West Virginia Department of Environmental Protection Surface Mining Control and Reclamation Act permit. The petitioner asserts that since the existing mine is abandoned, this plan will provide the same measure of protection for the miners as the existing standard.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. E8-23186 Filed 10-1-08; 8:45 am]

**BILLING CODE 4510-43-P**

## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

[Docket No. OSHA-2008-0040]

#### **Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

**DATES:** Comments must be submitted (postmarked, sent, or received) by December 1, 2008.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2008-0040, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the ICR (OSHA-2008-0040). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the “Public

Participation” heading in the section of this notice titled “Supplementary Information.”

**Docket:** To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:**

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA’s estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

**Manufacturer’s Certification of Modifications (paragraph (b)(2)).** The Standard requires that when aerial lifts are “field modified” for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity,

such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2-1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that the modified aerial lift is safe for use, thereby, preventing failure while employees are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency’s functions, including whether the information is useful;
- The accuracy of OSHA’s estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB extend its approval of the information collection requirement contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The Agency wishes to retain its current estimate of 21 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

**Type of Review:** Extension of a currently approved collection.

**Title:** Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67).

**OMB Number:** 1218-0230.

**Affected Public:** Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

**Number of Respondents:** 1,000.

**Frequency of Response:** On occasion.

**Average Time Per Response:** Ranges from 1 minute (.02 hour) to maintain the manufacturer’s certification record to 2

minutes (.03 hour) to disclose the record to an OSHA Compliance Officer.

**Estimated Total Burden Hours:** 21.

**Estimated Cost (Operation and Maintenance):** \$0.

**IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows:

- (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2008-0040). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled “ADDRESSES”). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site’s “User Tips” link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational

Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2007 (72 FR 31159).

Signed at Washington, DC, on September 23rd, 2008.

**Edwin G. Foulke, Jr.**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E8-23134 Filed 10-1-08; 8:45 am]

BILLING CODE 4510-26-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. NRC-2008-0359]

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on July 7, 2008.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 74—Material Control and Accounting of Special Nuclear Material.

3. *Current OMB approval number:* 3150-0123.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Submission is a one-time requirement which has been completed by all current licensees. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are required annually or semi-annually. Other reports are submitted as events occur.

6. *Who is required or asked to report:* Persons licensed under 10 CFR 70 who possess and use certain forms and

quantities of Special Nuclear Material (SNM).

7. *An estimate of the number of annual responses:* 21.

8. *The estimated number of annual respondents:* 19.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* An annual total of 8,589 hours (989 hours for reporting and 7,600 hours for recordkeeping). The average annual burden per respondent for reporting is 47 hours. The average annual burden per recordkeeping for the 110 record keepers is 61 hours.

10. *Abstract:* 10 CFR Part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess, use and produce strategic special nuclear material, and special nuclear material of moderate strategic significance and low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by November 3, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150-0123), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to [Nathan.J.Frey@omb.eop.gov](mailto:Nathan.J.Frey@omb.eop.gov) or submitted by telephone at (202) 395-7345.

The NRC Clearance Officer is Russell Nichols, (301) 415-6874.

Dated at Rockville, Maryland, this 24th day of September 2008.

For the Nuclear Regulatory Commission.

**Gregory Trussell,**

*Acting NRC Clearance Officer, Office of Information Services.*

[FR Doc. E8-23231 Filed 10-1-08; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. Stn 50-528]

### Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a temporary exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.46 and 10 CFR 50, Appendix K, for Facility Operating License No. NPF-41, issued to Arizona Public Service Company (APS, the licensee), for operation of the Palo Verde Nuclear Generating Station (PVNGS), Unit 1, located in Maricopa County, Arizona. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

#### Environmental Assessment

##### *Identification of the Proposed Action*

The proposed action would allow the use of up to eight lead fuel assemblies (LFAs) manufactured by AREVA NP with fuel rods clad with M5 to be inserted into the PVNGS, Unit 1 reactor core during operating Cycles 15, 16, and 17.

The proposed action is in accordance with the licensee's request for exemption dated March 8, 2008, as supplemented by letter dated September 10, 2008.

##### *The Need for the Proposed Action*

The proposed temporary exemption is needed to allow the use of M5 LFAs by APS to evaluate cladding for future fuel assemblies that may need to be of a more robust design than current fuel assemblies to allow for possibly higher duty or extended burnup. The regulations specify standards and acceptance criteria only for fuel rods clad with Zircaloy or ZIRLO. Consistent with 10 CFR 50.46, a temporary exemption is required to use fuel rods clad with an advanced alloy that is not Zircaloy or ZIRLO. Therefore, the licensee needs a temporary exemption to insert up to eight LFAs containing new cladding material into the PVNGS,

Unit 1 reactor core for test during operation.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed exemption will not present any undue risk to the public health and safety. The safety evaluation performed by Framatome ANP, Inc., "BAW-10227P-A, Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel, Framatome Cogema Fuels, February 2000," demonstrates that the predicted chemical, mechanical, and material performance characteristics of the M5 cladding are within those approved for Zircaloy under anticipated operational occurrences and postulated accidents. Furthermore, the LFAs will be placed in non-limiting locations. In the unlikely event that cladding failures occur in the LFAs, the environmental impact would be minimal and is bounded by previous accident analyses.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the PVNGS, Unit 1, NUREG-0841, dated February 1982.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on September 9, 2008, the staff consulted with the Arizona State official, Aubrey Godwin of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 8, 2008, as supplemented by letter dated September 10, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML080790524 and ML082620212, respectively). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Dated at Rockville, Maryland, this 26th day of September 2008.

For the Nuclear Regulatory Commission.

#### **Balwant K. Singal,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E8-23238 Filed 10-1-08; 8:45 am]

**BILLING CODE 7590-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. IC-28408]

### **Notice of Applications for Deregistration under Section 8(f) of the Investment Company Act of 1940**

September 26, 2008.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September, 2008. A copy of each application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1520 (tel. 202-551-5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

#### **FOR FURTHER INFORMATION CONTACT:**

Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

#### **AIM Special Opportunities Funds [File No. 811-8697]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 19, 2007, applicant transferred its assets to corresponding series of AIM Funds Group, based on net asset value. Expenses of \$320,500 incurred in connection with the reorganization were paid by Invesco Aim Advisors, Inc., applicant's investment adviser.

*Filing Dates:* The application was filed on August 8, 2008, and amended on September 19, 2008.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, TX 77046-1173.

**Legg Mason Partners Appreciation Fund, Inc. [File No. 811-1940] Legg Mason Partners Capital Fund, Inc. [File No. 811-2667] Legg Mason Partners Aggressive Growth Fund, Inc. [File No. 811-3762] CitiFunds Trust I [File No. 811-4006]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to a corresponding series of Legg Mason Partners Equity Trust, based on net asset value. Expenses of approximately \$2,487,856, \$521,422, \$4,718,848 and \$6,788, respectively, incurred in connection with the reorganizations were paid by each applicant and Legg Mason, Inc., the parent company of the investment adviser for each applicant.

*Filing Date:* The applications were filed on August 15, 2008.

*Applicants' Address:* 55 Water St., New York, NY 10041.

**Legg Mason Partners California Municipals Fund, Inc. [File No. 811-3970] Legg Mason Partners Adjustable Rate Income Fund [File No. 811-6663]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to corresponding series of Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately \$78,899 and \$103,534, respectively, incurred in connection with the reorganizations were paid by each applicant and Legg Mason Inc., the parent company of the investment adviser for each applicant.

*Filing Date:* The applications were filed on August 15, 2008.

*Applicants' Address:* 55 Water St., New York, NY 10041.

**Credit Suisse Short Duration Bond Fund [File No. 811-21032]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On July 30, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$8,200 incurred in connection with the liquidation were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser. Applicant has retained \$11,851 in cash for payment of outstanding expenses.

*Filing Date:* The application was filed on September 12, 2008.

*Applicant's Address:* c/o Credit Suisse Asset Management, LLC, Eleven Madison Ave., New York, NY 10010.

**Dreyfus Florida Intermediate Municipal Bond Fund [File No. 811-6489]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 3, 2007, applicant transferred its assets to Dreyfus Intermediate Municipal Bond Fund, Inc., based on net asset value. Expenses of \$56,540 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on September 4, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus Florida Municipal Money Market Fund [File No. 811-7091]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 27, 2007, applicant transferred its assets to Dreyfus Municipal Money Market Fund, Inc., based on net asset value. Expenses of \$47,480 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on September 8, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus Insured Municipal Bond Fund, Inc. [File No. 811-4237]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On June 11, 2007, applicant transferred its assets to Dreyfus Municipal Bond Fund, a series of Dreyfus Bond Funds, Inc., based on net asset value. Expenses of \$30,124 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

*Filing Date:* The application was filed on September 8, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus Massachusetts Intermediate Municipal Bond Fund [File No. 811-6644]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 24, 2007, applicant transferred its assets to Dreyfus Premier State Municipal Bond Fund—Massachusetts Series—Class Z shares, based on net asset value. Expenses of \$30,124 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

*Filing Date:* The application was filed on September 4, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus New Jersey Intermediate Municipal Bond Fund [File No. 811-6643]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On June 7, 2007, applicant transferred its assets to Dreyfus Premier New Jersey Municipal Bond Fund, Inc. (Class Z shares), based on net asset value. Expenses of \$30,124 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

*Filing Date:* The application was filed on September 4, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus New York Tax Exempt Intermediate Bond Fund [File No. 811-5161]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 28, 2007, applicant transferred its assets to Dreyfus New York Tax Exempt Bond Fund, Inc., based on net asset value. Expenses of \$55,080 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on September 8, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus Pennsylvania Intermediate Municipal Bond Fund [File No. 811-7089]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On November 29, 2007, applicant transferred its assets to Dreyfus Premier State Municipal Bond Fund—Pennsylvania Series—Class Z shares, based on net asset value. Expenses of \$53,460 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

*Filing Date:* The application was filed on September 8, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Dreyfus Premier GNMA Fund [File No. 811-4880]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an

investment company. On May 3, 2007, applicant transferred its assets to Dreyfus Premier GNMA Fund, Inc., based on net asset value. Expenses of \$46,307 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

*Filing Date:* The application was filed on September 4, 2008.

*Applicant's Address:* c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

**Black Pearl Funds [File No. 811-21785]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On July 30, 2008, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$4,500 incurred in connection with the liquidation were paid by Firsthand Capital Management, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on August 29, 2008.

*Applicant's Address:* Firsthand Capital Management, Inc., 125 South Market St., Suite 1200, San Jose, CA 95113.

**XTF Investors Trust [File No. 811-22002]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 10, 2008 and July 25, 2008, applicant made liquidating distributions to its shareholders, based on net asset value. Expenses of \$3,440 incurred in connection with the liquidation were paid by applicant and XTF Advisors, LLC, applicant's investment adviser.

*Filing Date:* The application was filed on August 29, 2008.

*Applicant's Address:* c/o Gemini Fund Services, LLC, 450 Wireless Blvd., Hauppauge, NY 11788.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23198 Filed 10-1-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, September 29, 2008, at 3 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(8) and (9) and 17 CFR 200.402(a)(8) and (9), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, September 29, 2008, will be: Matters Related to the Financial Markets.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: September 29, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23282 Filed 10-1-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Roundtable on Modernizing the Securities and Exchange Commission's Disclosure System on Wednesday, October 8, 2008, beginning at 9 a.m.

The roundtable will take place in the Auditorium of the Commission's headquarters at 100 F Street, NE., Washington, DC. The roundtable will be open to the public with seating on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

The roundtable will consist of an open discussion on the Commission's financial disclosure system, including the information needs of investors, public companies, and others and the capabilities of modern information technology to improve transparency and ease of use. The roundtable will be organized as two panels, each consisting of investors, issuers, academics, and

other parties with experience with the Commission's financial disclosure system.

For further information, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 29, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23283 Filed 10-1-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

**MB Tech, Inc., Order of Suspension of Trading**

September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MB Tech, Inc., because it has not filed any periodic reports since the period ended June 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of MB Tech, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of MB Tech, Inc., is suspended for the period from 9:30 a.m. EDT on September 30, 2008, through 11:59 p.m. EDT on October 13, 2008.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23378 Filed 9-30-08; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-58650; File No. SR-Amex-2008-65]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change To Allow Issuers of Exchange-Traded Funds (“ETFs”) and Structured Products Who Are Voluntarily Delisting the Securities From the Exchange and Re-Listing on Another National Securities Exchange To Submit to the Exchange a Letter From an Authorized Officer of the Issuer Rather Than a Certified Copy of Board of Directors Resolutions

September 25, 2008.

#### I. Introduction

On August 7, 2008, American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Amex Rule 18 to allow issuers of exchange-traded funds (“ETFs”) and structured products who are voluntarily delisting the securities from the Exchange and re-listing on another national securities exchange to submit a letter to the Exchange from an authorized executive officer of the issuer, rather than a certified copy of board resolutions. The proposed rule change was published for comment in the **Federal Register** on August 21, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange seeks to amend Amex Rule 18, which governs the procedure by which an issuer may voluntarily withdraw securities from listing. Currently, Amex Rule 18 requires an issuer to provide the Exchange with a certified copy of the resolution of its board of directors approving the delisting. Under the proposed rule change, an issuer of certain securities<sup>4</sup>

that proposes to delist and re-list its securities on another national securities exchange may, in lieu of providing the Exchange with a certified copy of the board resolution, provide the Exchange with a letter signed by an authorized executive officer of the issuer. That letter must set forth the reasons for the delisting, and provide the basis of the officer’s authority to take such action. In addition, the proposed rule change would be effective as of the date of closing of the acquisition of the Exchange by NYSE Euronext, the ultimate parent company of the Exchange (“NYSE Acquisition”).<sup>5</sup> In the event the closing date does not occur on or before December 31, 2008, the proposed rule change would not take effect and the Exchange would rescind the rule by a separate rule filing. In its filing, the Exchange stated that, as part of the NYSE Acquisition, NYSE Euronext intends to cease the trading and listing of ETF securities and structured products on the Exchange. Upon completion of the merger, and to effectuate its business plan, NYSE Euronext will request these issuers to voluntarily delist,<sup>6</sup> and will encourage them to re-list on NYSE Arca, Inc. (“NYSE Arca”) and/or New York Stock Exchange LLC (“NYSE”).<sup>7</sup>

The Exchange also proposes to make minor clarifying changes to Section 1010 of the Amex Company Guide, and to delete from that section the restatement of Exchange Rule 18 and Rule 12d2-2 under the Act.

#### III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent

with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission notes that permitting issuers of ETFs and structured products who are voluntarily delisting to submit a letter to the Exchange from an authorized executive officer instead of a certified copy of the resolution adopted by the issuer’s board of directors is consistent with the requirements of the Act and Rule 12d2-2 thereunder, and is similar to the voluntary withdrawal procedures for dually-listed issuers on NYSE Arca,<sup>10</sup> and index-linked securities on NYSE.<sup>11</sup> The proposal does not alter an issuer’s obligation to meet the requirements of the issuer’s governing documents, the laws of its jurisdiction of incorporation, or complying with Rule 12d2-2 under the Act.

In addition to requiring the letter from the authorized executive officer to provide the reasons for the withdrawal, the new rule will require the letter to set forth the basis for the officer’s authority to take such delisting action on behalf of the issuer. This latter requirement should help to ensure that the issuer complies with the applicable laws in effect in its jurisdiction of incorporation, and has the authority to act on behalf of the issuer.<sup>12</sup> At the same time, the proposal may ease the burden on issuers who wish to voluntarily delist and transfer the listing to another national securities exchange.<sup>13</sup>

The Commission also notes that the proposed delisting procedures apply only to securities that would be listed

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See NYSE Arca Equities Rule 5.4(b); see also Securities Exchange Act Release No. 54672 (October 30, 2006), 71 FR 65021 (November 6, 2006) (SR-NYSEArca-2006-47).

<sup>11</sup> See Section 806.02 of the NYSE Listed Company Manual; see also Securities Exchange Act Release No. 57041 (December 26, 2007), 73 FR 216 (January 2, 2008) (SR-NYSE-2007-99).

<sup>12</sup> The Commission notes that Rule 12d2-2 specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated to delist from a national securities exchange. See 17 CFR 240.12d2-2(c)(2)(i).

<sup>13</sup> While NYSE Euronext is requesting that these issuers re-list on NYSE Arca or the bond platform of NYSE, the Commission notes that these issuers are free to choose the best market for their securities for which they qualify and the proposed rule does not limit the issuer’s choice of markets.

1200A-AEMI and 1201A *et seq.* (Commodity-Based Trust Shares), 1400 *et seq.* (Trading of Paired Trust Shares), 1500-AEMI and 1501 *et seq.* (Trading of Partnership Units), or 1600 *et seq.* (Trading of Trust Units).

<sup>5</sup> Pursuant to a merger agreement dated January 17, 2008 among the Exchange, the Amex Membership Corporation, NYSE Euronext and certain other entities, a successor to the Exchange will become an indirect, wholly-owned subsidiary of NYSE Euronext. After the closing of the merger, the Exchange will be renamed NYSE Alternext U.S. LLC.

<sup>6</sup> See note 4, *supra*.

<sup>7</sup> See note 14, *infra*.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58364 (August 14, 2008), 73 FR 49508.

<sup>4</sup> This proposal applies to securities listed pursuant to listed pursuant to Amex Company Guide Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants) or 107 (Other Securities) and Exchange Rules 1000-AEMI and 1001 *et seq.* (Portfolio Depositary Receipts), 1000A-AEMI and 1001A *et seq.* (Index Fund Shares), 1000B *et seq.* (Managed Fund Shares), 1200-AEMI and 1201 *et seq.* (Trading of Trust Issued Receipts),

and traded on another national securities exchange. As such, transparent last sale information will continue to be disseminated on the securities on an uninterrupted basis. Further, this requirement will ensure other protections for trading a security on a national securities exchange will remain in place, such as the periodic reporting obligations under the Act.

Further, the Commission finds that the deletion of the restatements of Rule 18 and Rule 12d2-2 in the Amex Company Guide is consistent with the requirements of the Act. The rules of Amex and the Commission are equally available on the Internet, and are updated when changed. As such, the restatements in the Company Guide are no longer necessary. The Exchange rules, however, will continue to reference Rule 12d2-2 to ensure issuers know they must comply with that rule, as well as the Exchange's requirements, to delist.

Finally, as noted above, the new rule will only be implemented upon the closing of the Exchange Acquisition. The Exchange has represented that, upon closing of the merger, it will notify applicable issuers that the rule has become effective.<sup>14</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Amex-2008-65) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23194 Filed 10-1-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58651; File No. SR-FINRA-2008-047]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Codes of Arbitration Procedure To Raise the Amount in Controversy Heard by a Single Chair-Qualified Arbitrator to \$100,000

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rule 12401 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and NASD Rule 13401 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to raise the amount in controversy that will be heard by a single chair-qualified arbitrator to \$100,000. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To \$100,000

If the amount of a claim is more than \$25,000 but not more than \$100,000

*\$100,000*, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

(c) Claims of More Than \$50,000 \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000 \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

13401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

(b) Claims of More Than \$25,000 Up To \$50,000 \$100,000

If the amount of a claim is more than \$25,000 but not more than \$50,000 \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] *unless the parties agree in writing to three arbitrators.*

(c) Claims of More Than \$50,000 \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than \$50,000 \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

\* \* \* \* \*

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>14</sup> Telephone conversation between Marija Willen, Vice President and Associate General Counsel, Amex, and Steve Kuan, Special Counsel, Commission, on September 25, 2008.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing to amend its Customer Code and Industry Code to raise the amount in controversy that would be heard by a single arbitrator to \$100,000, exclusive of interest and expenses.<sup>3</sup> The arbitrator would be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 would be heard by a public, chair-qualified arbitrator.

Under the proposal, parties would be permitted to request a panel of three arbitrators for claims of more than \$25,000, but not more than \$100,000, if all parties agreed in writing to the request.<sup>4</sup> Claims of more than \$100,000 would continue to be heard by three arbitrators unless the parties agree in writing to one arbitrator.<sup>5</sup>

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. Claims for over \$50,000 are heard by a panel of three arbitrators.<sup>6</sup>

FINRA is also proposing to remove the current option for one party unilaterally to require three arbitrators in cases with claims for more than \$25,000.<sup>7</sup> FINRA believes this is not an efficient use of resources, as it requires other parties to incur higher hearing session costs and additional delays caused by scheduling three arbitrators instead of one. Therefore, the proposed rule would mandate a single arbitrator in all such cases unless all parties agree, in writing, to request a three person panel.

<sup>3</sup> See proposed amendments to Rules 12401(b) and 13401(b).

<sup>4</sup> *Id.*

<sup>5</sup> See proposed amendments to Rules 12401(c) and 13401(c).

<sup>6</sup> See Rules 12401 and 13401. The current threshold for appointing one or three arbitrators has been in effect since 1998. See Securities Exchange Act Release No. 38635 (May 14, 1997), 62 FR 27819 (May 21, 1997) (SR-NASD-97-22) (approval order) and NASD Notice to Members 98-90. Customer disputes are resolved by a single, chair-qualified public arbitrator or a majority-public panel consisting of a public arbitrator, a chair-qualified public arbitrator, and a non-public arbitrator. Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted (see Rules 13402 and 13802).

<sup>7</sup> See proposed amendments to Rules 12401(b) and 13401(b).

Raising the threshold for claims heard by a single arbitrator would increase efficiencies and decrease costs for parties and FINRA. Parties would experience reduced case processing times because of the flexibility associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Parties would save time in the arbitrator selection process because they would receive only one list of eight names from which to choose their arbitrator, rather than three lists of eight names.<sup>8</sup> This means they would only research the disclosures and histories of eight proposed arbitrators instead of 24.

Parties would also benefit from reduced hearing session fees. For claims between \$25,000.01 and \$50,000, parties would save \$150 per hearing session<sup>9</sup> by reducing fees from \$600 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator).<sup>10</sup> For claims between \$50,000.01 and \$100,000, the savings would be \$300 per hearing session by reducing fees from \$750 (for a hearing with three arbitrators) to \$450 (for a hearing with one arbitrator). The parties' cost for photocopying pleadings and exhibits would be reduced by two-thirds. FINRA would benefit from a more efficient use of its arbitrator roster since cases for \$100,000 or less would use only one arbitrator instead of three. FINRA's photocopying costs and mailing expenses would also be reduced.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>11</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the

<sup>8</sup> For example, for customer cases, if the panel consists of one arbitrator, the Neutral List Selection System ("the System") generates a list of eight public arbitrators from the chairperson roster. If the panel consists of three arbitrators, the System generates a list of eight public arbitrators from the chairperson roster; a list of eight arbitrators from the public roster; and a list of eight arbitrators from the non-public roster. FINRA sends the lists to the parties along with each arbitrator's employment history for the prior 10 years and other background information (see Rules 12403 and 13403).

<sup>9</sup> The term "hearing session" means any meeting between the parties and arbitrator(s) of four hours or less, including a hearing or a pre-hearing conference. (see Rules 12100(n) and 13100(n)). For full day hearings, the savings would be \$300 for claims between \$25,000.01 and \$50,000, and \$600 for claims between \$50,000.01 and \$100,000.

<sup>10</sup> See Rules 12902 and 13902.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

purposes of the Act because it would make arbitration more expeditious and efficient, and would decrease users' forum fees and related expenses.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-047 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-047 and should be submitted on or before October 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23195 Filed 10-1-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58660; File No. SR-FINRA-2008-027]

### Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the Consolidated FINRA Rulebook

September 26, 2008.

#### I. Introduction

On July 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule relating to the adoption of FINRA Rule 3220 (Influencing or Rewarding Employees of Others) and FINRA Rule 2070 (Transactions Involving FINRA Employees) in the new consolidated FINRA rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 11, 2008.<sup>4</sup> The Commission received one comment letter in response to the proposed rule change.<sup>5</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook, FINRA proposed to transfer without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) into the Consolidated FINRA Rulebook and to delete the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The proposed rule change would renumber NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook, and would delete NASD Rules 3060 and 3090 in their entirety from the Transitional Rulebook.

##### (A) Proposed FINRA Rule 3220

###### (1) Background

NASD Rule 3060 (Influencing or Rewarding Employees of Others) currently states that no member or associated person shall give gifts or gratuities to an agent or employee of another person in excess of \$100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The rule, which

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules (hereinafter, "NYSE Rules") apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> See Securities Exchange Act Release No. 34-58308 (August 5, 2008); 73 FR 46664 (Aug. 11, 2008) (notice).

<sup>5</sup> See letter from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Sept. 2, 2008 ("SIFMA letter").

protects against improprieties that may arise when members or their associated persons give gifts or gratuities to employees of a customer, has been in effect in its current form since 1969, with changes only to the dollar amounts, rising from \$25 to \$50 to \$100.<sup>6</sup> The rule requires each member to maintain a separate record of all gifts or gratuities. The rule also contains an express exclusion for payments made pursuant to bona fide, written employment contracts.

NYSE Rule 350 (Compensation or Gratuities to Employees of Others) reaches similar conduct in prohibiting, absent prior written consent of the recipient's employer, any member or member organization from giving any gratuity in excess of \$100 per person per year to any principal, officer, or employee of another member or member organization, financial institution, news or financial information media, or non-member broker or dealer in securities, commodities or money instruments.<sup>7</sup> NYSE Rule 350 has specific provisions addressing compensation to operations employees of members (e.g., NYSE Floor personnel). In addition, NYSE Rule 350 requires that records of all such gratuities and compensation be retained for at least three years.

###### (2) Proposal

FINRA proposed to transfer NASD Rule 3060 into the Consolidated FINRA Rulebook without material change and renumbered as FINRA Rule 3220. One of the advantages of the existing regulatory standard is the clarity of the rule's application—it prevents gifts in excess of a fixed amount, currently \$100. Both the NASD and NYSE rules have a \$100 limitation on gifts.

FINRA believes that NASD Rule 3060 generally is well understood by members. FINRA recently issued additional guidance on NASD Rule 3060 in *Notice to Members* 06-69.<sup>8</sup> Among the issues addressed in that *Notice* was the fact that NASD Rule 3060 does not apply to gifts of *de minimis* value, or to promotional items of nominal value

<sup>6</sup> See NASD *Notice to Members* 93-8 (February 1993) (SEC Approval of Amendment Relating to the Payment of Gratuities or Anything of Value by Members to Others); see also Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (SR-NASD-84-8) (approval order).

<sup>7</sup> In addition, NYSE Rule 350(a)(1) prohibits any member from employing or compensating any person for services rendered except with the prior consent of that person's employer. FINRA proposed to delete this provision, even though it does not pertain to gifts, because a substantively identical provision exists in NYSE Rule 346(b). FINRA intends to review NYSE Rule 346(b) as part of a later phase of the rulebook consolidation process.

<sup>8</sup> See NASD *Notice to Members* 06-69 (December 2006) (Gifts and Gratuities).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

displaying a firm's logo. The *Notice* stated that NASD Rule 3060 does not prohibit customary Lucite tombstones, plaques or other similar solely decorative items commemorating a business transaction or event. The *Notice* also stated that gifts should be valued at the higher of cost or market value and tickets should be valued at the higher of cost or face value. In addition, FINRA staff has used its interpretive authority to address unintended consequences of the rule, such as unreasonable limitations on giving a bereavement or sympathy gift.<sup>9</sup>

FINRA proposed to eliminate the provision in NYSE Rule 350 permitting member firms to obtain prior written consent of the recipient's employer for any gift over \$100. FINRA believes that the gift rule should establish a fixed amount and does not see any business need to justify giving gifts in amounts greater than the limits specified in the rule. FINRA also would delete the provisions in NYSE Rule 350 and NYSE Rule Interpretation 350/02 addressing compensation to operations/Floor employees of NYSE as they are not relevant for FINRA.<sup>10</sup> For similar reasons, provisions in NYSE Rule 350.10 pertaining to employment of or gratuities to personnel working the Floor of other exchanges would be deleted.<sup>11</sup> Finally, FINRA would eliminate the provisions of NYSE Rule 350 relating to record retention, as NASD Rule 3060(c) addresses the same issue. FINRA proposed to eliminate NYSE Rule Interpretation 350/01, and provisions in NYSE Rule 350.10 pertaining to gifts among close relatives, because the concepts contained in both are adequately addressed by proposed FINRA Rule 3220 and existing guidance. Lastly, FINRA would eliminate NYSE Rule Interpretation 350/03 because FINRA has proposed a separate rule that

<sup>9</sup> See Interpretive Letter dated December 17, 2007 to Amal Aly, SIFMA from Gary L. Goldsholle, FINRA, available at: <http://www.finra.org/RulesRegulation/PublicationsGuidance/InterpretiveLetters/ConductRules/P037695>.

<sup>10</sup> NYSE Rule Interpretation 350/02 would be deleted in its entirety. Note that NYSE Rule 350 also contains provisions that address gifts and gratuities to employees of the NYSE. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section (B) under Item II.A.1. FINRA's proposals with respect to FINRA Rules 3220 and 2070 would, in combination, delete NYSE Rule 350 in its entirety.

<sup>11</sup> NYSE Rule 350.10 also contains provisions that address employment or compensation of NYSE employees by members or member organizations. These provisions are addressed in connection with FINRA's proposal to adopt FINRA Rule 2070. See Section (B) under Item II.A.1. Because Proposed FINRA Rules 3220 and 2070 would address the substance of NYSE Rule 350.10, FINRA proposed to delete NYSE Rule 350.10 in its entirety.

addresses business entertainment.<sup>12</sup> Any guidance provided under NASD Rule 3060, including, without limitation, notices to members and interpretation letters, also would apply to the proposed FINRA Rule 3220.<sup>13</sup> The Commission notes three interpretative letters previously issued with respect to NASD Rule 3060.<sup>14</sup> The interpretative letters include FINRA's rule on members providing business entertainment.<sup>15</sup>

#### (B) Proposed FINRA Rule 2070

##### (1) Background

Both NASD and NYSE rules address conflicts of interest involving FINRA and NYSE employees.

NASD Rule 3090 addresses this issue in three ways. First, NASD Rule 3090(a) requires a member, when it has actual notice that a NASD employee has a financial interest or controls trading in an account, to promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to NASD. Second, NASD Rule 3090(b) prohibits a member from making any loan of money or securities to a NASD employee. This prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship. Third, NASD Rule 3090(c) prohibits any member from directly or indirectly giving, or permitting to be given, anything of more than nominal value to any NASD employee who has responsibility for a regulatory matter involving the member. This applies regardless of the \$100 per individual per year limitation set forth in NASD Rule 3060(a). The term "regulatory matter" is defined to include, without limitation, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the member.

<sup>12</sup> See Securities Exchange Act Release No. 55765 (May 15, 2007), 72 FR 28743 (May 22, 2007) (notice) see also Amendment No. 3 to File No. SR-NASD-2006-044 (January 2, 2008).

<sup>13</sup> Telephone conference among Gary Goldsholle and Adam Arkel, FINRA, and Haimera Workie, Branch Chief, Alicia Goldin, Special Counsel, Sharon Lawson, Senior Special Counsel and Steve Kuan, Special Counsel, Commission, on September 11, 2008.

<sup>14</sup> These interpretative letters are currently available at FINRA's web site at <http://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/ConductRules/index.htm>.

<sup>15</sup> See, e.g., letter to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc., dated June 24, 1999.

The NYSE rules governing conflicts of interest involving NYSE employees differ from the NASD approach in two ways. First, rather than applying the duplicate statement approach to NYSE employees (which applies to NASD employees under NASD Rule 3090(a)), NYSE Rule 407(a) prohibits a member or member organization, without the prior written consent of the NYSE, from opening a securities or commodities account or executing any transaction in which an employee of the NYSE is directly or indirectly interested.<sup>16</sup> NYSE Rule 401.10 states that an employee of the NYSE or any of its affiliated companies who wishes to open a securities or commodities account should apply for permission from the NYSE's Ethics Officer. Second, the NYSE Rules differ from the nominal value approach set forth in NASD Rule 3090(c) by instead setting procedures for outside compensation and placing a dollar limit on gifts. Specifically, with respect to outside compensation, NYSE Rule 350(a)(1) prohibits any member, allied member, member organization or employee thereof from employing or compensating any person for services rendered without the prior consent of the person's employer (i.e., the NYSE with respect to NYSE employees).<sup>17</sup> With respect to gifts, NYSE Rule 350(a)(2) prohibits giving any gift or gratuity in excess of \$50 per person per year to any principal, officer, or employee of the NYSE or its subsidiaries without the prior written consent of the NYSE. This rule is written without regard to whether the NYSE employee has responsibility for regulatory matters affecting the member.

##### (2) Proposal

FINRA proposed to transfer NASD Rule 3090 into the Consolidated FINRA Rulebook without material change,<sup>18</sup> renumbered as FINRA Rule 2070 and that the corresponding provisions in NYSE Rules 350(a)(1), 350(a)(2), 350.10,

<sup>16</sup> NYSE Rule 407(a) requires duplicate confirmations and account statements with respect to accounts or transactions of members, allied members and employees associated with another member or member organizations.

<sup>17</sup> NYSE Rule 350.10 provides that requests for NYSE consent under Rule 350(a)(1) should be sent to the NYSE's Human Resources Department at least 10 days in advance of the proposed date of employment. NYSE Rule 350.10 states that approval to employ an NYSE employee outside the hours of regular employment by the NYSE will be limited to employment of a routine or clerical nature. NYSE Rule 350.10 further states that when the NYSE has granted permission for part-time employment of a NYSE employee, no approval is required for a subsequent gratuity or bonus to such person provided it is in proportion to gratuities given to full-time employees of the employing organization.

<sup>18</sup> The proposal included stylistic edits to NASD Rule 3090 for purposes of clarity and readability.

407(a) and 407.10 be eliminated.<sup>19</sup> Rather than requiring the member to obtain FINRA's consent to open a securities or commodities account or execute a trade (as set forth under NYSE Rules 407(a) and 407.10), FINRA believes that it is sufficient, as set forth under NASD Rule 3090(a), to continue to require the member to obtain and implement an instruction from the FINRA employee directing the member to provide duplicate statements to FINRA. The proposed rule change would, as set forth in NASD Rule 3090(b), continue to prohibit members from making any loan of money or securities to a FINRA employee, subject to the exceptions set forth in that rule. Lastly, the proposed rule change would, as set forth in NASD Rule 3090(c), continue to prohibit members from directly or indirectly giving, or permitting to be given, anything above nominal value to any FINRA employee who has responsibility for a "regulatory matter" involving the member. FINRA does not believe that its employees should be permitted to receive gifts of up to \$50 per year when such employees have responsibility for a regulatory matter. In addition, FINRA proposed not to adopt the \$50 limit in NYSE Rule 350(a)(2) for gifts to all other employees to maintain consistency with the FINRA Code of Conduct, which, like NASD Rule 3060(a) (and proposed FINRA Rule 3220(a)), establishes a \$100 limit. Rule 3090(c) need not be amended to address the employment and compensation issues as to NYSE employees in NYSE Rules 350(a)(1) and 350.10 because the FINRA Code of Conduct addresses these issues through its provisions on Outside Activities or Employment.

FINRA proposed to delete listing and delisting proceedings as potential "regulatory matters" under NASD Rule 3090(c) in light of FINRA's separation from NASDAQ and The American Stock Exchange.

### III. Comment Letters

The Commission received one comment letter on the proposal<sup>20</sup> and a response to comments from FINRA.<sup>21</sup> In its comment letter, SIFMA supported FINRA's effort to consolidate its two

rulebooks.<sup>22</sup> However, SIFMA suggested that FINRA should amend the proposed rule change with respect to NASD Rule 3060 to incorporate a principles-based approach to gifts and gratuities.<sup>23</sup> SIFMA said that FINRA should permit firms to establish their own gifts and gratuities policies and limits rather than retain the limits set forth in the rule.<sup>24</sup> SIFMA also supports the inclusion of a safe harbor in new Rule 3220, under which a FINRA member firm would be deemed to be in compliance with new Rule 3220, if the aggregate annual amount of gifts and gratuities to any one person did not exceed a de minimis amount, such as \$250.<sup>25</sup>

FINRA responded to the request by SIFMA for a principles-based approach to gifts and gratuities by stating that FINRA had given a great deal of consideration to this approach, but had determined to maintain the existing standards, which offer predictability and clarity.<sup>26</sup> FINRA also noted that it does not believe that it is appropriate at this time to increase the limit for gifts and gratuities to \$250 from \$100.<sup>27</sup>

### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>28</sup> In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>29</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that, as part of the FINRA rulebook consolidation process, the proposed rule change would streamline and reorganize existing rules that govern influencing or rewarding the employees of others and transactions involving FINRA employees. Further, the proposed rule change would provide greater regulatory clarity with respect to these issues.

### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-FINRA-2008-027) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-23196 Filed 10-1-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-58661; File No. SR-FINRA-2008-030]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) in the Consolidated FINRA Rulebook

September 26, 2008.

#### I. Introduction

On June 18, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as a FINRA rule in the consolidated FINRA rulebook ("Consolidated FINRA Rulebook")<sup>3</sup> without material change, and to delete the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01.<sup>4</sup> The proposed rule change would renumber NASD Rule 3013 and IM-3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal**

<sup>19</sup> With respect to NYSE Rule 407(a), the only change to the rule at this stage in the rulebook consolidation would be to delete language pertaining to employees of the NYSE. See Exhibit 5. NYSE Rule 407.10 would be deleted in its entirety. With respect to NYSE Rules 350(a)(1), 350(a)(2) and 350.10, see *supra* notes 10 and 11.

<sup>20</sup> See *supra*, footnote 5.

<sup>21</sup> See letter from Gary L. Goldsholle, Vice President and Associate General Counsel, FINRA Regulatory Group, dated September 11, 2008.

<sup>22</sup> See SIFMA letter.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See *supra*, footnote 21.

<sup>27</sup> *Id.*

<sup>28</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>29</sup> 15 U.S.C. 78o-3(b)(6).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See *infra* note 7 for discussion about the Consolidated FINRA Rulebook.

<sup>4</sup> See *infra* note 7 regarding "Incorporated NYSE Rules."

Register on July 15, 2008.<sup>5</sup> The Commission received two comment letters in response to the proposed rule change.<sup>6</sup> This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

As part of the process of developing the new consolidated rulebook (the "Consolidated FINRA Rulebook"),<sup>7</sup> FINRA proposed to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as a FINRA rule without material change and, delete the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01. The proposed rule change would renumber NASD Rule 3013 and IM-3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook.

Currently, NASD Rule 3013 and Incorporated NYSE Rule 342 require each member to designate one or more principals to serve as a chief compliance officer ("CCO"). These Rules further require that the chief executive officer(s) ("CEO") certify annually that the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD (or NYSE) rules and federal securities laws and regulations. The certification includes not only a statement that the member has in place certain compliance processes, but also that the CEO(s) has conducted one or more meetings with the CCO(s) in the preceding 12 months to discuss the processes. Incorporated NYSE Rule 342 and NASD IM-3013 explain that the mandated meetings between the CEO(s) and CCO(s) must include a discussion of the member's compliance efforts to date

and identify and address significant compliance problems and plans for emerging business areas. NASD IM-3013 contains additional guidance, including setting forth the expertise that is expected of a CCO. The same expertise requirements are also found in Incorporated NYSE Rule Interpretation 342.30.

There currently are four differences between the NASD and NYSE rules. First, NASD IM-3013 requires that the member provide to its board of directors and audit committees (or equivalent bodies) the report that evidences the processes to which the CEO(s) certifies either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of certification. The Incorporated NYSE rules require submission of the report to those bodies prior to certification. FINRA does not intend to require the board of directors or audit committee to review or consider the report as a condition to the CEO executing the certification; rather, FINRA intends the provision to ensure that those governing bodies remain informed of this aspect of the member's compliance system in the context of their overall responsibility for governance and internal controls of the member for which they serve. Accordingly, the proposed rule change would maintain the NASD rule requirements.

Second, the current rules differ in the certification deadline. Incorporated NYSE Rule 342.30 requires certification as part of the submission of a member's annual compliance report, which is due by April 1 of each year. NASD Rule 3013 requires certification not later than the anniversary of the prior year's certification. And while NASD allowed members to execute their first certification no later than April 1, 2006, to accommodate Dual Members, many FINRA-only firms executed their first certification earlier than that and thus have differing anniversary dates. Moreover, new members are required to execute their first certification within a year of approval for membership; therefore some firms necessarily are on a cycle that does not correspond to April 1. The proposed rule change would maintain the NASD rule deadline to provide firms the flexibility to certify on a schedule that meets with their organizational structure and procedures. Firms that have certified on April 1 of each year could continue to do so on that date.

Third, Incorporated NYSE Rule 342.30 requires that the member submit its certification to the Exchange, whereas the NASD rule requires only

that the certification be maintained for inspection. FINRA believes the submission of the certification creates an unnecessary—albeit small—additional burden on members with no attendant benefits to FINRA's examination program. Therefore, the proposed rule change would retain the NASD requirement that the certifications be kept for inspection by members.

Finally, while both rules permit designation of multiple CCOs subject to certain conditions, Incorporated NYSE Rule Interpretation 311(b)(5) requires Exchange approval of the allocation of supervisory responsibilities between those CCOs. By comparison, the NASD rules rely on the business judgment of the member and require only that the member define and document the areas of responsibility allocated to each CCO. FINRA believes the NASD approach is more appropriate, and therefore the proposed rule change would not adopt the approval requirement into the new rule in the Consolidated FINRA Rulebook.

## III. Comment Letters

The Commission received two comment letters on the proposal,<sup>8</sup> to which FINRA responded to in a letter to the Commission.<sup>9</sup> The first commenter generally supported the proposal but disagreed with the deletion of the April 1 certification deadline contained in Incorporated NYSE Rule 342.30.<sup>10</sup> In this commenter's view, adopting the NASD rule requiring certification no later than on the anniversary date of the previous year's certification could make the process less predictable and potentially more cumbersome for member firms. Specifically, the commenter indicated that for larger firms, the annual deadline would "inject uncertainty as to when the entire report and process should commence each year" and that "the time period covered by the report and certification will be constantly shifting."<sup>11</sup> As an alternative, the commenter suggested either: (1) Retaining the April 1 deadline of Incorporated NYSE rule 342.30 or; (2) amending the proposed rule to allow member firms to effect annual certifications no later than three weeks after the anniversary date of the previous year's certification, but in no event later than April 1.

<sup>8</sup> See *supra* note 6.

<sup>9</sup> See letter from Philip Shaikun, Associate Vice President and Associate General Counsel, FINRA to Florence E. Harmon, Acting Secretary, Commission, dated September 4, 2008 ("FINRA Letter").

<sup>10</sup> SIFMA Letter.

<sup>11</sup> SIFMA Letter.

<sup>5</sup> See Securities Exchange Act Release No. 358118 (July 8, 2008); 73 FR 40647 (July 15, 2008) ("notice").

<sup>6</sup> See letters from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Florence Harmon, Acting Secretary, Commission, dated August 4, 2008 ("SIFMA Letter"), and letter from Christine LaBastille, Managing Director, Integrated Management Solutions ("IMS") to Secretary, Commission, dated August 5, 2008 ("IMS Letter").

<sup>7</sup> The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together referred to as the "Transitional Rulebook"). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). Dual Members also must comply with NASD Rules. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

FINRA responded that under the proposed rule change, firms that previously certified on or near April 1 may continue to do so, so long as the certification is executed no later than the anniversary of the prior year's certification.<sup>12</sup> Furthermore, FINRA indicated that the commenter's concern appears to result from the mistaken assumption that firms that are members of both FINRA and the NYSE must couple the CEO certification with the annual compliance report that is required to be submitted each year on April 1 under Incorporated NYSE Rule 342.30. FINRA stated that a firm may choose to time the process of the CEO certification so that it coincides with the Annual Compliance Report requirement, but that the proposed rule change does not compel this outcome, thus giving a firm flexibility as to when the certification process begins and ends. In addition, FINRA indicated that the commenter did not adequately consider the needs of FINRA-only firms that have chosen a cycle other than April 1 that better meets their organizational structure and procedures.<sup>13</sup>

The second commenter asserted that NASD Rule 3013 is unworkable and ineffectual for small FINRA member firms and urged FINRA to adopt a small firm exemption as part of the proposal.<sup>14</sup> The commenter stated that the provision requiring the CEO and CCO to meet to discuss and review elements related to the certification is unworkable for small firms when the CEO and CCO are the same person. FINRA indicated that it expects that a person who is both CEO and CCO of a firm will contemplate the required topics of the meeting and document that he or she has reviewed those matters.<sup>15</sup>

#### IV. Discussion and Findings

After careful review of the proposed rule change, the comment letters and FINRA's response to the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to national securities associations,<sup>16</sup> and in particular, Section 15A(b)(6) of the Act,<sup>17</sup> which

requires among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The Commission believes that it is reasonable for FINRA to adopt NASD Rule 3013 and IM-3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook because they have previously been found to meet statutory requirements.<sup>18</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2008-030) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-23197 Filed 10-1-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58649; File No. SR-NYSE-2008-82]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify Its Policy With Respect to Legal Opinions in Connection With Listings of Securities

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 9, 2008, New York Stock Exchange LLC ("NYSE" or "the Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On

<sup>18</sup> See e.g. Securities Exchange Act Release No. 53509 (March 17, 2006), 71 FR 15238 (March 27, 2006) (SR-NASD-2006-036) (order approving rule change to IM-3013 finding that the proposed change furthered investor protection goals and provided clarity regarding application of the rule); Securities Exchange Act Release No. 56285 (August 17, 2007), 72 FR 48715 (August 24, 2007) (SR-NASD-2007-049) (order approving rule change to NASD Rule 3013 and IM-3013 finding that the proposed changes decreased the likelihood of fraud and manipulative acts in addition to increasing investor protection).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

September 21, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposal from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Manual by removing the provisions throughout Chapter Seven that require issuers to supply opinions of counsel to the Exchange in connection with any initial listing application or supplemental listing application.<sup>4</sup>

<sup>3</sup> In Amendment No. 1, the Exchange made technical, non-substantive corrections to Exhibits 3 and 5.

<sup>4</sup> This filing deletes references to the opinion of counsel requirements from the "Reference Guide For Subsequent Listing Applications" section at the front of the Manual and replaces them with a requirement (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation. In addition, the filing makes the same modification to the following sections of the Manual: 702.04 (Supporting Documents); 703.01 (part 2) (General Information); 703.02 (part 3) (Stock Split/Stock Rights/Stock Dividend Listing Process); 703.03 (Short Term Rights Offerings Relating to

<sup>12</sup> FINRA Letter.

<sup>13</sup> *Id.*

<sup>14</sup> IMS Letter. IMS also commented on the requirements of NASD Rule 3012, which is not part of the proposal.

<sup>15</sup> FINRA Letter.

<sup>16</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

Exchange rules have long required the delivery of an opinion of counsel addressed to the Exchange in connection with each application to list securities, including applications to list additional shares of a previously listed class.<sup>5</sup> The Exchange believes that its opinion requirement is duplicative of several safeguards that now exist to protect investors in listed securities. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit. Additionally, the underwriters of securities sold in a public offering receive legal opinions as to the validity of the issuance of the securities they purchase, as well as performing their own due diligence on the company and the securities. Furthermore, a legal opinion as to the legality of the issuance of the securities being registered is delivered to the SEC in connection with the filing of any registration statement. Accordingly, the Exchange proposes to

Listed Securities Listing Process); 703.04 (Public Offerings and Private Placement of Common Stock Listing Process); 703.05 (Preferred Stock Offerings Listing Process); 703.06 (Debt Securities Offerings Listing Process); 703.07 (Reserves for Convertible Securities Listing Process); 703.08 (Mergers, Acquisitions and Other Business Combinations Listing Process); 703.09 (Stock Option, Stock Purchase and Other Remuneration Plans Listing Process); 703.10 (Technical Original Listing Process); 703.11 (Supplemental Listing Process); 703.12 (Warrants Listing Standards); 703.13 ("Special Stocks" Listing Process (Stocks Which Have Periodic Increases in Conversion Rate Into Common Stock)); 703.14 (Voting Trust Certificate Listing Process); and 903.01 (Format of Original Listing Application).

<sup>5</sup>In connection with the listing of equity securities, including rights, warrants, preferred stock, options, etc., the required opinion (as set forth in Section 702.04) relates to: (i) The legality of organization of the company; (ii) the authorization of the issuance of the securities for which listing application is made; (iii) the validity of such securities; (iv) whether shares are, or will be when issued, fully-paid and non-assessable; (v) whether shareholders are personally liable under the laws of the jurisdiction in which the company is organized and the jurisdiction in which its principal place of business is located; (vi) the date and nature of any order or proceeding of any Federal or State regulatory authority prerequisite to issuance of any unissued securities covered by the application and, if such steps have not been completed, the present status thereof; (vii) whether the shares require registration under the Federal securities laws and, if so, a statement that the shares are so registered; and (viii) if counsel, any partner of such counsel, or any member of a firm rendering the opinion is a director or officer of the company, that fact is required to be disclosed in the opinion.

In the case of debt securities, Section 703.06(G) requires an opinion of counsel addressing: (i) The legality of organization of the company; (ii) the authorization by the Board of Directors, in accordance with Exchange policy, of the issuance and listing of the securities for which the listing application is made; (iii) the validity of such securities; qualification of the indenture under the Trust Indenture Act of 1939; and (iv) effectiveness of registration of the securities under the Securities Act of 1933, or, if not registered, the reasons why not.

end its policy of requiring legal opinions in connection with listing applications, including applications to list additional shares of a previously listed class. In lieu of the existing opinion requirements, the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or (ii) if no opinions of counsel exist, provide to the Exchange a certificate of good standing from the company's jurisdiction of incorporation.<sup>6</sup>

The Exchange notes that the Commission approved a rule filing by the American Stock Exchange (the "Amex") in 2000 to eliminate opinion requirements from the Amex Company Guide under the same conditions the Exchange is proposing in this filing.<sup>7</sup> Additionally, to the Exchange's knowledge, Nasdaq does not require legal opinions in connection with new listings. As such, the Exchange believes that it is appropriate to conform its listing procedure in this regard with those of its direct competitors. In doing so, the Exchange will avoid the possibility of any competitive harm arising out of the imposition of this additional burden on issuers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>8</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendment specifically seeks to remove impediments to and perfect the mechanisms of a free and open market by conforming the Exchange's listing procedures to those of Nasdaq and the Amex, thereby eliminating any competitive disadvantage the Exchange may suffer as a result of imposing a legal opinion requirement with respect to securities listings. In addition, the Exchange's procedures will continue to protect the interests of investors by imposing requirements that will ensure

<sup>6</sup>The Exchange will also put companies on notice of this requirement by including a reference to it in the checklist of required documentation sent out to listing applicants and included on the Exchange's Web site. See the revised list of required documentation included in Exhibit 3.

<sup>7</sup> See Securities Exchange Act Release No. 42539 (March 17, 2000), 65 FR 15672 (March 23, 2000) (SR-Amex-99-39).

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

that listed companies are duly and validly organized and in good standing in their jurisdiction of incorporation.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act.<sup>10</sup>

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 C.F.R. 240.19b-4(f)(6).

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-82 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-82 and should be submitted on or before October 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-23193 Filed 10-1-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58647; File No. SR-NYSEArca-2008-99]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ProShares Trust II**

September 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 18, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act,<sup>3</sup> NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), is submitting this proposed rule change in connection with the listing and trading on the Exchange of shares ("Shares") of fourteen (14) funds ("Funds") of ProShares Trust II (formerly known as Commodities & Currency Trust) ("Trust") based on several currencies, commodities and commodities indexes, relating to the names of the Trust and the Funds, the Funds' Web site disclosure relating to the availability of information regarding the Shares, and the expected price of the Shares at commencement of trading. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission has approved the listing of the Shares on the Exchange pursuant to Section 19(b)(2)<sup>4</sup> of the Exchange Act. The Exchange intends to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").<sup>5</sup> The Commission previously approved the Shares for listing on the American Stock Exchange LLC ("Amex")<sup>6</sup> and for trading on the Exchange pursuant to UTP.<sup>7</sup> The Exchange is filing this proposal to reflect changes to the names of the Trust and the Funds, to clarify the Funds' Web site disclosure relating to the availability of information regarding the Shares, and to correct a representation in the NYSE Arca Order regarding the expected price of the Shares at commencement of trading. Additional information regarding the Funds and the Trust is included in the NYSE Arca Order and the Amex Order.

In the NYSE Arca Order, the Commission approved listing on the Exchange of the following Funds of the Trust (formerly known as Commodities & Currency Trust): (1) Ultra DJ-AIG Commodity ProShares, (2) UltraShort DJ-AIG Commodity ProShares, (3) Ultra DJ-AIG Agriculture ProShares, (4) UltraShort DJ-AIG Agriculture ProShares, (5) Ultra DJ-AIG Crude Oil ProShares, (6) UltraShort DJ-AIG Crude Oil ProShares, (7) Ultra Gold ProShares, (8) UltraShort Gold ProShares, (9) Ultra Silver ProShares, (10) UltraShort Silver ProShares, (11) Ultra Euro ProShares, (12) UltraShort Euro ProShares, (13) Ultra Yen ProShares and (14) UltraShort Yen ProShares. The Trust has advised

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) ("NYSE Arca Order").

<sup>6</sup> See Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39). Notice of the Amex proposed rule change was published in Securities Exchange Act Release No. 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) ("Amex Order").

<sup>7</sup> See Securities Exchange Act Release No. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

the Exchange that the Trust intends to rebrand the Funds as follows: (1) ProShares Ultra DJ–AIG Commodity, (2) ProShares UltraShort DJ–AIG Commodity, (3) ProShares Ultra DJ–AIG Agriculture, (4) ProShares UltraShort DJ–AIG Agriculture, (5) ProShares Ultra DJ–AIG Crude Oil, (6) ProShares UltraShort DJ–AIG Crude Oil, (7) ProShares Ultra Gold, (8) ProShares UltraShort Gold, (9) ProShares Ultra Silver, (10) ProShares UltraShort Silver, (11) ProShares Ultra Euro, (12) ProShares UltraShort Euro, (13) ProShares Ultra Yen and (14) ProShares UltraShort Yen.

#### Availability of Information Regarding the Shares

To clarify the representations made in the NYSE Arca Order regarding availability of information, the Web sites for the Funds and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) The most current NAV per Share; (b) the reported closing price; (c) calculation of the premium or discount of such price against the NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the reported closing price against the NAV per Share, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the prospectus; and (f) other applicable quantitative information.

All other information relating to availability of information regarding the Shares remains as stated in the NYSE Arca Order.

#### Criteria for Initial and Continued Listing.

To correct a representation made in the NYSE Arca Order regarding the criteria for initial and continued listing, the price of the Shares is expected to be in a range from \$20 to \$70 per Share at the commencement of trading on the Exchange. The Shares will not be subject to an initial offering period as described in the Amex Order and the NYSE Arca Order and the expected price range does not relate to any such offering period.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Exchange Act in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposal provides clarifying information regarding the operation of the Funds. The Exchange believes that the proposal will facilitate the listing and trading of additional types of commodity and currency-based investments that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>10</sup> and Rule 19b–4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.<sup>12</sup> However, Rule 19b–4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of

investors and the public interest. In view of the immediate nature of the relief requested, the Exchange seeks to have the proposed amendments become operative immediately. The Exchange requests that the Commission waive the 30-day delayed operative date, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b–4(f)(6) thereunder. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change should benefit investors by clarifying information regarding the names and operation of the Funds. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2008–99 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b–4(f)(6).

<sup>12</sup> *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b–4(f)(6).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-99 and should be submitted on or before October 23, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-23192 Filed 10-1-08; 8:45 am]  
BILLING CODE 8011-01-P

**SOCIAL SECURITY ADMINISTRATION**

**Agency Information Collection Activities: Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and

Budget (OMB) in compliance with Public Law (Pub. L.) 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes extensions (no change) of existing OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers listed below.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, E-mail address:

*OIRA\_Submission@omb.eop.gov.*

(SSA), Social Security Administration, DCBPM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400, E-mail address: *OPLM.RCO@ssa.gov.*

SSA has submitted the information collections listed below. Your comments on the information collections will be most useful if OMB and SSA receive them within 30 days from the date of this publication. You can request a copy of the information collections by e-mail, *OPLM.RCO@ssa.gov*, fax 410-965-6400, or by calling the SSA Reports Clearance Officer at 410-965-0454.

1. *Help America Vote Act—0960-0706*. H.R. 3295, the Help America Vote Act of 2002, mandates that States verify the identities of newly registered voters. When newly registered voters do not have drivers' licenses or State-issued ID cards, they must supply the last four digits of their Social Security Numbers to their local State election agencies for

verification. The election agencies forward this information to their State Motor Vehicle Administration (MVA) that inputs the data into the American Association of MVAs, a central consolidation system that routes the voter data to SSA's Help America Vote Verification (HAVV) system. Once SSA's HAVV system has confirmed the identity of the voter, the information will be returned along the same route (in reverse) until it reaches the State election agency. The official respondents for this collection are the State MVAs.

*Type of Request:* Extension of an OMB-approved information collection.

*Number of Respondents:* 2,352,204.

*Frequency of Response:* 1.

*Average Burden per Response:* 2 minutes.

*Estimated Annual Burden:* 78,407 hours.

2. *National Direct Deposit Initiative—31 CFR 210-0960-0711*. Many SSA benefits recipients choose to receive their payments via the Direct Deposit Program, in which SSA transfers funds directly to recipients' accounts at a financial institution (FI). However, many Title II payment recipients still receive their payments through traditional paper checks. In an effort to encourage these beneficiaries to change from paper checks to the Direct Deposit Program, SSA is collaborating with the Department of the Treasury and several FIs on a National Direct Deposit Initiative. In this program, SSA will work with FIs to determine which of the target Title II beneficiaries have accounts at the participating banks. The banks will then send forms to these beneficiaries encouraging them to enroll in the Direct Deposit Program. The respondents are the participating FIs and Title II beneficiaries currently receiving their payments via check.

*Type of Request:* Extension of an OMB-approved information collection.

| Type of respondent              | Information collection requirement                                      | Number of respondents | Frequency of response | Average burden response (minutes) | Estimated annual burden (hours) | Cost requirement                               | Estimated cost burden per respondent | Total annual cost burden |
|---------------------------------|---|-----------------------|-----------------------|-----------------------------------|---------------------------------|--|--------------------------------------|--------------------------|
| Title II Payment Recipients.    | Direct Deposit Enrollment Form.   | 100,000               | 1                     | 2                                 | 3,333                           | N/A .....                                      | N/A                                  | N/A                      |
| Financial Institutions (banks). | Data screening/matching activities; SSA's data management requirements. | 10                    | 1                     | 240                               | 40                              | Printing/ mailing of 100,000 enrollment forms. | \$1,039                              | \$10,390                 |

<sup>15</sup> 17 CFR 200.30-3(a)(12).

| Type of respondent | Information collection requirement | Number of respondents | Frequency of response | Average burden response (minutes) | Estimated annual burden (hours) | Cost requirement | Estimated cost burden per respondent | Total annual cost burden |
|--------------------|------------------------------------|-----------------------|-----------------------|-----------------------------------|---------------------------------|------------------|--------------------------------------|--------------------------|
| Totals .....       | .....                              | 100,010               | .....                 | .....                             | 3,373                           | .....            | .....                                | 10,390                   |

Dated: September 26, 2008.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. E8-23168 Filed 10-1-08; 8:45 am]

**BILLING CODE 4191-02-P**

## DEPARTMENT OF STATE

[Public Notice 6382]

### 30-Day Notice of Proposed Information Collection: DS-4131, Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area, OMB Control Number 1405-0181

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area.

• *OMB Control Number:* 1405-0181.  
 • *Type of Request:* Revision.  
 • *Originating Office:* Office of Oceans Affairs, Bureau of Oceans, Environment and Science (OES/OA).

• *Form Number:* DS-4131.  
 • *Respondents:* Operators of Antarctic expeditions organized in or proceeding from the United States.

• *Estimated Number of Respondents:* 22.

• *Estimated Number of Responses:* 22.

• *Average Hours Per Response:* 10.5 hours.

• *Total Estimated Burden:* 231 hours.  
 • *Frequency:* On occasion.  
 • *Obligation to Respond:* Mandatory.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 2, 2008.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit

comments by any of the following methods:

• E-mail: [kastrich@omb.eop.gov](mailto:kastrich@omb.eop.gov). You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

• Mail (paper, disk, or CD-ROM submissions): Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

• Fax: 202-395-6974.

**FOR FURTHER INFORMATION CONTACT:** You may obtain copies of the proposed information collection and supporting documents from Lawrence R. Hughes, Office of Oceans Affairs, Room 2665, Bureau of Oceans, Environment and Science, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Mr. Hughes can be reached at (202) 647-0237 or at [HughesLR@state.gov](mailto:HughesLR@state.gov).

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

### Abstract of Proposed Collection

Information solicited on the Advance Notification Form (DS-4131) is required to provide the U.S. Government with information on tourist and other non-governmental expeditions to Antarctica. This is needed to comply with Article VII(5)(a) of the Antarctic Treaty and comport with Antarctic Treaty Consultative Meeting Recommendation XVIII-1 and Resolution XIX-3.

### Methodology

Information will be submitted in signed original by U.S. organizers of tourist and other non-governmental expeditions to Antarctica. Advance copies are submitted by e-mail.

Dated: September 25, 2008.

**Margaret F. Hayes,**

*Director of Oceans Affairs, Bureau of Oceans, Environment and Science, Department of State.*

[FR Doc. E8-23280 Filed 10-1-08; 8:45 am]

**BILLING CODE 4710-09-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Request To Abandon Tatum Airport, Tatum, NM

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

**ACTION:** Notice of intent to abandon airport property.

**SUMMARY:** The FAA proposes to rule and invites public comment on the abandonment of the Tatum Airport, Tatum, NM, under provisions of Title 49, U.S.C. Section 47107(h) and to release the State of New Mexico as airport sponsor from the Airport Improvement Program Grant Agreement Grant Assurances, and to change forever the lands of the Tatum Airport from aeronautical to non-aeronautical use. The State of New Mexico will transfer Tatum's grant obligations associated with AIP Grant Number 3-35-0044-001-2002 obligations to Navajo Lake Airport, Navajo Dam NM by investing the grant funds of \$27,362 for fencing at Tatum to a fencing project at Navajo Lake Airport.

**DATES:** Comments must be received on or before October 23, 2008.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration Southwest Region, Airports Division Louisiana/New Mexico Airports Development Office, ASW640, 2601 Meacham Boulevard Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas D. Baca, Director, Aviation Division, New Mexico Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504-1149.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andy Velayos, Program Manager, Federal Aviation Administration

Louisiana/New Mexico Airports Development Office, ASW640, 2601 Meacham Boulevard Fort Worth, Texas 76137.

The request to release the state of New Mexico from the grant assurances may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to abandon Tatum Airport and release the State of New Mexico from the Grant Assurances, and change the status of the lands at the Tatum Airport.

The State of New Mexico as owner of the airport that is on state owned land filed notice with the FAA to permanently abandon Tatum Airport, Tatum, NM. As a result of this request the state will make restitution in the amount of \$27,362.00 for the fencing installed by FAA Airport Improvement Program (AIP) Grant in 2002 (one and only AIP Grant at this airport) by investing the same amount of funds in an AIP project at Navajo Lake Airport, Navajo Dam, NM. Prior to the 2002 Grant being issued, Tatum Airport was not federally obligated. This abandonment will result in the lands of the Tatum Airport being changed from aeronautical to nonaeronautical use and release the lands from the conditions of the AIP Grant Agreement Grant Assurances.

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 application, notice and other documents germane to the application in person at the office of Mr. Thomas D. Baca, Director, Aviation Division, New Mexico Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504-1149.

Issued in Fort Worth, Texas, on September 24, 2008.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. E8-23262 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2008-44]

#### 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 22, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2008-0966 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:** Frances Shaver, (202) 267-9681, or Katrina Holiday, (202) 267-3603, 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 29, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA-2008-0966.

*Petitioner:* Boeing Aerospace Operations, INC.

*Section of 14 CFR Affected:* §§ 145.209(h)(1)(2) and 145.217.

*Description of Relief Sought:* The petitioner is seeking relief from the requirements for certificated repair station contract maintenance and required procedures for maintaining and revising contract maintenance information.

[FR Doc. E8-23234 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land-Use Assurance; Mansfield Lahm International Airport, Mansfield, OH

**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 proposal consists of the sale of vacant, containing trees, streams, and scattered wetland areas owned by the City of Mansfield. The Miller Farm Parcel #50 is approximately 100.521 acres. The land was acquired under FAA Project No(s): AIP-90-2-3-39-0049-0991 (Contract No. AIP FA91-GL-1806). There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land for release is vacant, not required for future development, safety, or compatible land use. The intended land use is infrastructure development, including roads, utilities, and industrial 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 with 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 November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Swann, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: (734) 229-2945/FAX Number: (734) 229-2950. Documents reflecting this FAA action may be reviewed at this same location or at Mansfield Lahm International Airport, Mansfield, Ohio.

**SUPPLEMENTARY INFORMATION:** Following is a legal description of the property located in Franklin Township, County of Richland, State of Ohio, and described as follows:

#### Legal Description of Property

Being a part of the southwest quarter of section 33, township 22, range 18 and being more particularly described as follows:

Beginning at the base of an 8" wood fence post found at the northeast corner of said southwest quarter, referenced by a 5/8" rebar found bearing N 89° - 12' - 33" E, 0.79 feet;

Thence with the following eight courses:

S 00° - 08' - 51" E, 508.28 feet along the east line of said southwest quarter to a 5/8 inch rebar found at the northeast corner of a conveyed to Charles R. and Dorothy A. Miller, Trustees by official record volume 177, page 252;

N 84° - 13' - 51" W, 148.00 feet along the northerly line of said land of Charles R. and Dorothy A. Miller to a 5/8 inch rebar found in the northwest corner of said land.

S 00° - 08' - 51" E, 296.00 feet along the west line of said land of Charles R. and Dorothy A. Miller to a 5/8 inch rebar with plastic cap stamped "Richland Eng. RLS 7209" in the southwest corner of said land.

S 89° - 12' - 33" W, 1,244.71 feet to an iron pin set; S 00° - 08' - 51" E, 1,825.57 feet to an iron pin set; S 89° - 28' - 00" W, 1,262.88 feet to an iron set in the west line of said southwest quarter;

N 00° - 38' - 10" W, 2,607.11 feet along said west line of said southwest quarter to a inch water pipe found in the northwest corner of said southwest quarter and passing through an iron pin found at 21.04 feet;

Thence, N 89° - 12' - 33" E, 2,677.09 along the north line of said southwest quarter to the place of beginning, containing 100.521 acres, more or less of which 1,689 acres are in the southwest quarter of section 33, Franklin Township and 96.832 acres are in the City of Mansfield and subject to all legal highways and easements of record.

Bearings: Survey X-230.

According to a survey made in September 2007 by Roger L. Stevens, Ohio Registered surveyor NO: 7052.

All iron pins set are 5/8 inch diameter rod with plastic cap stamped "S.J.L. INC."

Issued in Romulus, Michigan on July 28, 2008.

**Matthew J. Thys,**

*Manager, Detroit Airports District Office, FAA, Great Lakes Region.*

[FR Doc. E8-22982 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than December 1, 2008.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21.1, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room Number W33-497, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room Number W34-204, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB

control number 2130-New."

Alternatively, comments may be transmitted via facsimile to (202) 493-6216 or (202) 493-6170, or via e-mail to Mr. Brogan at [robert.brogan@dot.gov](mailto:robert.brogan@dot.gov), or to Ms. Jackson at [nakia.jackson@dot.gov](mailto:nakia.jackson@dot.gov). Please refer to the assigned OMB control number or information collection title in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS-21.1, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room Number W33-497, Washington, DC 20590 (telephone: (202) 493-6292) or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Room Number W34-204, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote

its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Factors for Selection of Railroads for Evaluation of Bridge Management Practices.

*OMB Control Number:* 2130–New.

*Abstract:* The Federal Railroad Administration (FRA) has conducted a Railroad Bridge Safety Program at various levels of effort ever since the enactment of the Railroad Safety Act of 1970. FRA is authorized under that act to issue regulations addressing a wide variety of subjects regarding railroad safety, but FRA has found that bridge safety has been well served by a non-regulatory policy.

The resulting Statement of Agency Policy on the Safety of Railroad Bridges, published in the **Federal Register** in 2000, is based on the findings of a survey conducted by FRA in 1992 and 1993. That survey showed that a large majority of railroads were managing their bridges in a manner which promoted the immediate safety of those bridges. FRA therefore adopted that Bridge Safety Policy, which incorporates non-regulatory guidelines. The non-regulatory guidelines of the Bridge Safety Policy are promulgated as Appendix C of the Federal Track Safety Standards, Title 49 Code of Federal Regulations, Part 213.

Since the initial bridge management survey was completed, FRA has continued to conduct evaluations of the bridge management practices of the Nation's railroads. Regular, continuing contact has been in place between FRA

and the larger railroads (Class I and major passenger carriers). However, the selection of smaller railroads (Class III short lines and smaller Class II regional railroads) has been on an ad hoc basis. FRA has based decisions to evaluate individual smaller railroads on recommendations from FRA regional staff, complaints from the public, and the small number of bridge-related train accidents.

The Government Accountability Office (GAO) in 2006 and 2007 conducted a study to evaluate the safety and serviceability of our Nation's railroad bridges and tunnels. GAO reported to the Congress on that study in August 2007. That report, "RAILROAD BRIDGES AND TUNNELS—Federal Role in Providing Safety Oversight and Freight Infrastructure Investment Could Be Better Targeted" includes the following recommendation:

To enhance the effectiveness of its bridge and tunnel safety oversight function, we recommend that the Secretary of Transportation direct the Administrator of the Federal Railroad Administration to devise a systematic, consistent, risk-based methodology for selecting railroads for its bridge safety surveys to ensure that it includes railroads that are at higher risk of not following the FRA's bridge safety guidelines and of having bridge and tunnel safety issues." FRA agrees with that recommendation, and is implementing it.

A vital part of that methodology is the development of information on which to base the factors by which railroads will be selected for surveys and evaluations. The factors developed by FRA, in conjunction with the railroads themselves, include such statistics as the length of a railroad in miles, the number, types and total length of its bridges, its level of traffic, the presence of hazardous material traffic, the operation of passenger trains, and the railroad's record of train accidents. Several of those factors, particularly regarding the railroad's bridge population, are not found in data already held or collected by FRA.

An attempt to characterize the selection factors without incorporating

that data on a railroad's bridge population would seriously compromise the accuracy and usefulness of the information. FRA has, therefore, determined that the effectiveness of its bridge safety program depends on this data, and has identified two options for collecting it. In one case, FRA inspectors could visit each railroad in turn, interview the managers of the railroad, and record the information presented. In the other case, FRA could request that each railroad provide its data to FRA in a convenient format.

FRA believes that the second option, self-reporting by the railroads, is more convenient for the responding universe, and that it represents the most efficient use of agency resources. Railroad managers will be able to gather the data on their own time schedules, within reason, and FRA would not have to devote employee time and travel expenses to visit the responding railroads.

FRA will use the data received in this project to rank individual railroads for scheduling bridge program evaluations by FRA's Bridge Safety Staff. The data will be analyzed against weighting factors, and railroads will be prioritized according to the resulting scores. The weighting factors are presently being reviewed by a committee of the American Short Line and Regional Railroad Association (ASLRRRA). FRA will consider the recommendation of ASLRRRA in this regard, and will make the weighting factors available to the respondent universe and the public as part of this project.

It should be noted that a high selection ranking of any railroad by FRA will not necessarily indicate that the railroad has a bridge safety problem. That determination, one way or the other, will only be made by FRA during its evaluation of that railroad's bridge management practices.

*Form Number(s):* FRA F 6180.129.

*Affected Public:* Railroads.

*Respondent Universe:* 567 Railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| Form No.                  | Respondent universe | Total annual responses | Average time per response (hours) | Total annual burden hours | Total annual burden cost |
|---------------------------|---------------------|------------------------|-----------------------------------|---------------------------|--------------------------|
| Form FRA F 6180.129 ..... | 567 Railroads ..... | 475 forms .....        | 3                                 | 1,425                     | \$57,000                 |

*Estimated Annual Burden:* 1,425 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA

informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it

displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 26, 2008.

**D.J. Stadler,**

*Director, Office of Financial Management,  
Federal Railroad Administration.*

[FR Doc. E8-23276 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Maritime Security Program

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Applications are now being received for one Maritime Security Program (MSP) Operating Agreement.

**SUMMARY:** The Maritime Administration (MARAD) is issuing this request for applications for one eligible vessel to fill one MSP Operating Agreement in accordance with the provisions of Subtitle C, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a Maritime Security Program (MSP) that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping. This request for applications provides, among other things, application criteria and a deadline for submitting applications for enrollment of one vessel in the MSP.

#### Applications

Applications are available by electronic mail. Please send requests for applications to *Peter.Petrelis@dot.gov*.

**DATES:** *Application Due Date:*

Applications for enrollment of one vessel in the MSP are November 3, 2008. Applications should be submitted to the address listed in the **ADDRESSES** section below.

**ADDRESSES:** *Application Submission:*

Submit applications for enrollment of vessels in the MSP to Peter E. Petrelis, Acting Deputy Director, Office of Sealift Support, W25-324, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Peter E. Petrelis, Acting Deputy Director, Office of Sealift Support, Maritime Administration, Telephone 202-366-6252. For legal questions, call Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration, 202-366-5320. For

military utility questions, call LTC Tony Moritz, United States Transportation Command, 618-229-1451/1529.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 24, 2003, the President signed the National Defense Authorization Act for Fiscal Year 2004, which contained the MSA 2003 creating a new MSP from FY 2006 through FY 2015. This program also provides financial assistance to operators of U.S.-flag vessels that meet certain qualifications. The MSA 2003 requires that the Secretary of Transportation (Secretary), in consultation with the Secretary of Defense (Sec Def), establish a fleet of active, commercially viable, militarily useful, privately-owned vessels to meet national defense and other security requirements. Section 53111 of the MSA 2003 authorizes \$156 million annually for FYs 2006, 2007, and 2008; \$174 million annually for FYs 2009, 2010, and 2011; and \$186 million annually for FYs 2012, 2013, 2014, and 2015 to support the operation of up to 60 U.S.-flag vessels in the foreign commerce of the United States.

Payments to participating operators are limited to \$2.6 million per ship per year for FYs 2006 through 2008, \$2.9 million per ship per year for FYs 2009 through 2011, and \$3.1 million per ship per year for FYs 2012 through 2015. Payments are subject to annual appropriations. Participating operators are required to make their commercial transportation resources available upon request by the SecDef during times of war or national emergency.

#### Application Criteria

The implementing MSP Regulations at 46 CFR 296.24(b)(2) provide that awards made subsequent to October 1, 2005, including the re-award of temporary agreements, must meet the ownership and operational requirements of 46 U.S.C. 53103(c) (i.e., priority of awards), and 46 CFR 296.24(b)(3) further stipulates that priority of subsequent awards will be assigned in accordance with requirements specified by the SecDef. Any re-award of an MSP Operating Agreement, or replacement of a vessel under an Agreement, is subject to approval by the SecDef, by and through the United States Transportation Command (USTRANSCOM).

The recipient of an Agreement is required to meet the citizenship eligibility requirements specified in 46 U.S.C. Chapter 531 and the implementing regulations at 46 CFR Part 296. Applicants with a vessel that meets program requirements, and who are

citizens of the United States within the meaning of 46 U.S.C. 50501 will be given first consideration. In the event that no applicants meet this citizenship requirement, the Maritime Administration and USTRANSCOM will consider other citizenship categories.

#### Vessel Requirements

Acceptable vessels for this MSP Operating Agreement must meet the requirements of 46 U.S.C. 53102(b) and 46 CFR § 296.11. The Commander, USTRANSCOM, established general evaluation criteria for operational requirements for eligible MSP vessels.

#### Payments

The applicant chosen for this MSP Operating Agreement will be eligible for payments in accordance with 46 U.S.C. 53106 and 46 CFR 296.41.

#### Maintenance and Repair (M&R) Work Agreement Requirement

Subtitle A, section 3517 of the MSA 2003 provides for a pilot program under which the Secretary of Transportation shall, subject to the availability of appropriations, require one or more persons to enter into an agreement under this section as a condition of awarding an operating agreement to the person under chapter 531 of title 46, United States Code, for one or more vessels that normally make port calls in the United States. All qualified maintenance and repair on the vessel shall be performed in the United States. The MSP contractor shall be reimbursed for the costs of qualified maintenance or repair performed in the United States versus the difference in cost of performing this work in a geographic region in which the MSP vessel generally operates. The recipient of this Agreement is required to sign an MSP M&R agreement which stipulates that in the event that sufficient M&R funding is available, the MSP contractor will commit to perform M&R work in a U.S. shipyard.

#### National Security Requirements

The applicant chosen to receive the MSP Operating Agreement will be required to enter into an Emergency Preparedness Agreement (EPA) pursuant to section 53107 of the MSA 2003. The EPA shall be a document incorporating the terms of the Voluntary Intermodal Sealift Agreement (VISA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

**Documentation**

The vessel chosen to receive the MSP Operating Agreement, if a foreign-flag vessel, must be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121 prior to being eligible for MSP payments. Further, proof of U.S. Coast Guard vessel documentation and all relevant charter and management agreements for the chosen vessel must be approved by the Maritime Administration before the vessel is eligible to receive MSP payments.

**Vessel Operation**

The vessel chosen to receive the MSP Operating Agreement must be operated exclusively in the U.S.-foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12105, except for tankers, which may be operated in foreign-to-foreign commerce, and shall not otherwise be operated in the coastwise trade of the United States.

**Obligation of the U.S. Government**

The amounts payable as MSP payments under an MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

**Merchant Marine Academy Cadets**

The MSP Operator shall agree to carry two Merchant Marine Academy cadets, if available, on each voyage.

**Approval**

The Secretary in conjunction with the SecDef may approve applications to enter into an MSP Operating Agreement and make MSP Payments with respect to vessels that are determined by the Secretary to be the most commercially viable and those that are deemed by the SecDef to be most militarily useful for meeting the sealift needs of the United States in time of war or national emergencies.

By Order of the Maritime Administrator.

Dated: September 26, 2008.

**Murray A. Bloom,**

*Acting Secretary, Maritime Administration.*  
[FR Doc. E8-23189 Filed 10-1-08; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF THE TREASURY****Submission for OMB Review;  
Comment Request**

September 22, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for

review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

**DATES:** Written comments should be received on or before November 3, 2008 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545-2099.

*Type of Review:* Extension.

*Title:* Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests.

*Forms:* 8924.

*Description:* Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests, is required by Section 403 of the Tax Relief and Health Care Act of 2006 which imposes an excise tax on certain transfers of qualifying mineral or geothermal interests.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 555 hours.

*OMB Number:* 1545-1073.

*Type of Review:* Extension.

*Title:* Credit for Prior Year Minimum Tax—Individuals, Estates and Trusts.

*Forms:* 8801.

*Description:* Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 89,107 hours.

*OMB Number:* 1545-1498.

*Type of Review:* Extension.

*Title:* REG-209826-96 (NPRM)

Application of the Grantor Trust Rules to Nonexempt Employees' Trusts.

*Description:* The regulations provide rules for the application of the grantor trust rules to certain nonexempt employees' trusts. Taxpayers must indicate on a return that they are relying on a special rule to reduce the overfunded amount of the trust.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 1,000 hours.

*OMB Number:* 1545-0090.

*Type of Review:* Revision.

*Title:* Form 1040-SS, U.S. Self-Employment Tax Return; Form 1040-PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia—Puerto Rico; and Anejo H-PR.

*Forms:* 1040-SS, 1040-PR, Anexo H-PR.

*Description:* Form 1040-S (Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands) and 1040-PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A, and provide credit to the taxpayer's social security account. Anejo H-PR is used to compute household employment taxes. Form 1040-SS and Form 1040-PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 2,880,460 hours.

*OMB Number:* 1545-1796.

*Type of Review:* Extension.

*Title:* REG-106879-00 (Final)  
Consolidated Loss Recapture Events.

*Description:* This document contains final regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The regulations provide for the filing of certain agreements in such cases. This document also makes clarifying and conforming changes to the current regulations.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 60 hours.

*OMB Number:* 1545-1935.

*Type of Review:* Extension.

*Title:* Notice 2005-40, election to defer net experience loss in a multiemployer plan.

*Description:* This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election

with the Service and the certification that must be filed if a restricted amendment is adopted.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 960 hours.

*OMB Number:* 1545-0714.

*Type of Review:* Extension.

*Title:* Employers Annual Information Return of Tip Income and Allocated Tips (Form 8027); Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027-T).

*Forms:* 8027, 8027-T.

*Description:* To help IRS in its examination of returns filed by tipped employees large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips, reported by employees, and in certain cases, the employer must allocate tips to certain employees.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 488,161 hours.

*OMB Number:* 1545-1675.

*Type of Review:* Extension.

*Title:* REG-122450-98 (Final) Real Estate Mortgage Investment Conduits; REG-100276-97; REG-122450-98 (NPRM) Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment (TD 9004).

*Description:* REG-122450-98 Sections 1.860E-1(c)(4)-(10) of the Treasury Regulations provide circumstances under which a transferor of a noneconomic residual interest in a Real Estate Mortgage Investment Conduit (REMIC) meeting the investigation, and two representation requirements may avail itself of the safe harbor by satisfying either the formula test or asset test. REG-100276-97; REG-122450-98 This regulation provides start-up and transitional rules applicable to financial asset securitization investment trust.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 1,220 hours.

*OMB Number:* 1545-0619.

*Type of Review:* Extension.

*Title:* Credit for Increasing Research Activities.

*Forms:* 6765.

*Description:* IRC section 38 allows a credit against income tax (determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 338,227 hours.

*OMB Number:* 1545-1218.

*Type of Review:* Extension.

*Title:* CO-25-96 (TD 8824—Final)

Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.

*Description:* Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 662 hours.

*OMB Number:* 1545-1518.

*Type of Review:* Extension.

*Title:* HSA, Archer MSA, or Medicare Advantage MSA Information.

*Forms:* 5498-SA.

*Description:* Section 220(h) requires trustees to report to the IRS and medical savings accountholders contributions to and the year-end fair market value of any contributions made to a medical savings account (MSA). Congress requires Treasury to report to them the total contributions made to an MSA for the current tax year. Section 1201 of the Medicare prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173) created new Code section 223. Section 223(h) requires the reporting of contributions to and the year-end fair market value of health savings accounts for tax years beginning after December 31, 2003.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 6,988 hours.

*OMB Number:* 1545-1424.

*Type of Review:* Revision.

*Title:* Cancellation of Debt.

*Forms:* 1099-C.

*Description:* Form 1099-C is used for reporting canceled debt, as required by section 6050P of the Internal Revenue Code. It is used to verify that debtors are correctly reporting their income.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 102,939 hours.

*OMB Number:* 1545-1492.

*Type of Review:* Extension.

*Title:* Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96-41.

*Forms:* 10001.

*Description:* Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax-exempt advance refunding bonds. Revenue Procedure 96-41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

*Respondents:* State, local, and Tribal Governments.

*Estimated Total Burden Hours:* 300 hours.

*OMB Number:* 1545-0184.

*Type of Review:* Extension.

*Title:* Sales of Business Property.

*Forms:* 4797.

*Description:* Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversion of assets, other than capital assets, and involuntary conversion of capital assets held more than one year. It is also used to compute ordinary income from recapture and the recapture of prior year section 1231 losses.

*Respondents:* Individuals or Households.

*Estimated Total Burden Hours:* 100,633,248 hours.

*OMB Number:* 1545-0120.

*Type of Review:* Extension.

*Title:* Certain Government Payments.

*Forms:* 1099-G.

*Description:* Form 1099-G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (e.g., unemployment compensation and income tax refunds). IRS uses the information to insure that the income is being properly reported by the recipients on their returns.

*Respondents:* Federal Government.

*Estimated Total Burden Hours:* 12,200,000 hours.

*OMB Number:* 1545-1091.

*Type of Review:* Extension.

*Title:* Corporate Passive Activity Loss and Credit Limitations.

*Forms:* 8810.

*Description:* Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to met passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 3,749,000 hours.

*OMB Number:* 1545-1012.

*Type of Review:* Extension.

*Title:* Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

*Forms:* FORM-5305A-SEP.

*Description:* Form 5305-A-SEP is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS, but is to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SEP. The data is used to verify the deduction.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 972,000 hours.

*OMB Number:* 1545-0928.

*Type of Review:* Extension.

*Title:* REG-124667-02 (Final)

Disclosure of Relative Values of Optional Forms of Benefit; EE-35-85 (Final) Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under The.

*Description:* These final regulations are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participant of their rights may result in loss of plan benefits.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 385,000 hours.

*OMB Number:* 1545-0967.

*Type of Review:* Extension.

*Title:* U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.

*Forms:* 8879-F, 8453-F.

*Description:* This form is used to secure taxpayer signatures and declarations in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 1,750 hours.

*OMB Number:* 1545-0238.

*Type of Review:* Extension.

*Title:* Certain Gambling Winnings.

*Forms:* W-2G.

*Description:* IRC section 6041 requires payers of certain gambling winnings to report them to IRS. If applicable, section 3402(g) and section 3406 require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 1,272,479 hours.

*OMB Number:* 1545-1008.

*Type of Review:* Extension.

*Title:* Passive Activity Loss Limitations.

*Forms:* 8582.

*Description:* Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax return.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 11,373,963 hours.

*OMB Number:* 1545-1150.

*Type of Review:* Revision.

*Title:* Short Form Return of Organization Exempt From Income Tax.

*Forms:* 990-EZ, Schedule A (Form 990 or 990-EZ), Schedule B (Form 990, 990-EZ or 990-PF), Schedule C (Form 990 or 990-EZ), Schedule E (Form 990 or 990-EZ), Schedule G (Form 990 or 990-EZ), Schedule L (Form 990 or 990-EZ), Schedule N (Form 990 or 990-EZ).

*Description:* Form 990-EZ is needed to determine that IRS section 501(a) tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. IRS uses the information from this form to determine if the filers are operating within the rules of their exemption.

*Respondents:* Not-for-profit institutions.

*Estimated Total Burden Hours:* 43,656,636 hours.

*OMB Number:* 1545-1257.

*Type of Review:* Extension.

*Title:* Credit for Prior Year Minimum Tax—Corporations.

*Forms:* 8827.

*Description:* Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 25,000 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622-3428, Internal Revenue

Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E8-23179 Filed 10-1-08; 8:45 am]

**BILLING CODE 4830-01-P**

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## UNITED STATES INSTITUTE OF PEACE

### Notice of Meeting

*Agency:* United States Institute of Peace.

*Date/Time:* Thursday, October 16, 2008, 9:30 a.m.–3:30 p.m.

*Location:* 1200 17th Street, NW., Suite 200, Washington, DC 20036-3011.

*Status:* Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98-525.

*Agenda:* October 16, 2008 Board Meeting; Approval of Minutes of the One Hundred Thirtieth Meeting (June 6, 2008) of the Board of Directors; Chairman's Report; Presidents Report; Election of Officers; Selection of National Peace Essay contest topics; Fellow's Report; Other General Issues.

*Contact:* Tessie F. Higgs, Executive Office, Telephone: (202) 429-3836.

Dated: September 26, 2008.

**Michael Graham,**

*Acting Executive Vice President, United States Institute of Peace.*

[FR Doc. E8-23164 Filed 10-1-08; 8:45 am]

**BILLING CODE 6820-AR-M**

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## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on October 15-16, 2008, at the Paralyzed Veterans of American Building, 801 18th Street, NW., Washington, DC. The meeting sessions will be held from 8 a.m. to 4 p.m. on October 15 and from 8 a.m. to 2 p.m. on October 16. The meeting is open to the public.

The purpose of the Committee is to present recommendations to the Secretary of Veterans Affairs on the rehabilitation needs of veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, Committee members will be provided updated briefings on various VA programs designed to enhance the rehabilitative potential of recently-discharged veterans. Members will also begin consideration of potential

recommendations to be included in the Committee's next annual report.

No time will be allocated at this meeting for oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Mr. Joseph Tucker, Designated Federal Officer, at (202) 461-9637. The Committee will accept written comments. Comments can be addressed to Mr. Tucker at the Department of Veterans Affairs, Veterans Benefits Administration (28),

810 Vermont Avenue, NW., Washington, DC 20420. In communication with the Committee, writers must identify themselves and state the organizations, associations, or person(s) they represent.

By Direction of the Secretary.

Dated: September 25, 2008.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E8-23176 Filed 10-1-08; 8:45 am]

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# Federal Register

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**Thursday,  
October 2, 2008**

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## **Part II**

## **Department of Labor**

**Office of Labor-Management Standards**

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**29 CFR Part 403**

**Labor Organization Annual Financial  
Reports for Trusts in Which a Labor  
Organization Is Interested, Form T-1;  
Final Rule**

**DEPARTMENT OF LABOR****Office of Labor-Management Standards****29 CFR Part 403**

RIN 1215-AB64

**Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T-1**

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** The Employment Standards Administration (ESA) Office of Labor-Management Standards (OLMS) of the Department of Labor publishes this final rule to establish a form to be used by labor organizations to file trust annual financial reports (Form T-1) and to provide appropriate instructions and revise relevant portions of 29 CFR Part 43 relating to such reports. On March 4, 2008, the Department published a notice of proposed rulemaking setting forth the Department's Form T-1 proposal. Under the proposal, certain labor organizations would file annual reports about certain trusts to which they contributed money or otherwise provided financial assistance or over which they exercised managerial control. This document sets forth the Department's review of and response to comments on the proposal. This final rule requires that a labor organization with total annual receipts of \$250,000 or more file a Form T-1 for each trust of the type defined by section 3(l) of the Labor-Management Reporting and Disclosure Act (LMRDA) and that meets one of the two following filing triggers: The labor organization, alone or with other labor organizations, either: Appoints or selects a majority of the members of the trust's governing board; or makes contributions to the trust that exceed 50 percent of the trust's receipts during the trust's fiscal year. This final rule provides five exemptions to the Form T-1 filing requirements: A political action committee (PAC) fund, if publicly available reports on the PAC fund are filed with federal or state agencies; any political organization for which reports are filed with the IRS under section 527 of the IRS code; trusts required to file a Form 5500 under the Employee Retirement Income Security Act (ERISA); federal employee health benefit plans that are subject to the provisions of the Federal Employees Health Benefits Act (FEHBA); and any trust for which an independent audit has been conducted, in accordance with

the standards set forth in this final rule. This final rule will apply prospectively.

**DATES:** *Effective Date:* This rule will be effective on December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Denise Boucher, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC, (202) 693-1185 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:****I. Statutory Authority**

This final rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Secretary's Order 4-2007, issued May 2, 2007, and published in the **Federal Register** on May 8, 2007 (72 FR 26159), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority. This rule implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, disclosing the labor organization's financial condition and operations during the reporting period. 29 U.S.C. 431(b). As administratively implemented, section 201 requires a labor organization to identify its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving \$10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of \$250 aggregate) to any officer, employee, or member, loans (of any amount) to any business enterprise, and other disbursements. The statute requires that such information shall be filed "in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations." *Id.*

Section 208 directs the Secretary to issue rules "prescribing reports concerning trusts in which a labor organization is interested" as she "may find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438. Section 3(l) of the LMRDA provides:

"Trust in which a labor organization is interested" means a trust or other fund or organization (1) which was created or

established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

29 U.S.C. 402(l).

**II. Background****A. Introduction**

On March 4, 2008, the Department issued a notice of proposed rulemaking (73 FR 11754) proposing to establish a Form T-1 to capture financial information pertinent to "trusts in which a labor organization is interested" (section 3(l) trusts), information that has largely gone unreported despite the trusts' significant effect on labor organization financial operations and their members' own interests. As noted in the proposal, the establishment of the Form T-1 is part of the Department's continuing efforts to better effectuate the reporting requirements of the LMRDA, which are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and to ensure proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations provide financial information required by the LMRDA. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The proposal noted that the Form T-1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on "subsidiary organizations." As noted in the proposal, labor organizations use section 3(l) trusts,

which by definition have a primary purpose to provide benefits for the members of the labor organization or their beneficiaries, 29 U.S.C. 402(l), for a myriad of purposes. Common examples of section 3(l) trusts include credit unions, strike funds, development or investment groups, training funds, apprenticeship programs, pension and welfare plans, building funds, and educational funds. Such trusts may be administered by trustees appointed by a labor organization(s), either singly or jointly with other labor organizations, or jointly with an employer(s). As discussed below, trusts administered jointly by trustees appointed by labor organization(s) and employer(s) are known as Taft-Hartley trusts. By requiring that labor organizations file the Form T-1 for specific section 3(l) trusts, labor organization members and the public will receive some of the same benefit of transparency regarding the trust that they now receive under the Form LM-2, thereby preventing a labor organization from using the trust to circumvent or evade its reporting obligations.

This final rule takes into account the Department's earlier efforts in 2003 and 2006 to implement a Form T-1. In fashioning this final rule, and as discussed in greater detail in the proposed rule, the Department relies on guidance from the United States Court of Appeals for the District of Columbia Circuit in its review of the 2003 Form T-1 rule (68 FR 58374, Oct. 9, 2003), *American Federation of Labor and Congress of Industrial Organizations v. Chao*, 409 F.3d 377 (DC Cir. 2005) and the District Court for the District of Columbia in its review of the 2006 Form T-1 rule (71 FR 57716, Sept. 29, 2006), *American Federation of Labor and Congress of Industrial Organizations v. Chao*, 496 F. Supp. 2d 76 (D.DC 2007). See 73 FR 11757. Thus, this final rule limits the labor organization's reporting requirement to those trusts in which the labor organization has managerial control or financial dominance, as defined in this rule.

The Department initially provided for a 45 day comment period ending April 18, 2008. 73 FR at 11754. In response to a number of requests, the Department published a notice extending the comment period to May 5, 2008. 73 FR 16611. The Department received 556 comments on the Form T-1 proposed rule. Of these comments, approximately 88 were unique comments. The remaining comments were form letters endorsing the proposal. Comments were received from labor organizations, employer, trade and public interest groups, Taft-Hartley plans, accounting

firms, a Member of Congress and labor organization members.

#### *B. The LMRDA's Reporting and Other Requirements*

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields "there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives." LMRDA, section 2(a), 29 U.S.C. 401(a). The statute creates a comprehensive scheme designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds.

The legislation was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. See generally, Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 851-55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements also were found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. See generally, Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 85-1417 (1957); see also, William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of*

*Employee Rights*, 59 Colum. L. Rev. 96 (1959).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a "bill of rights" for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, see LMRDA, sections 101-105, 29 U.S.C. 411-415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, see LMRDA, sections 201-06, 211, 29 U.S.C. 431-36, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, see LMRDA, sections 301-06, 29 U.S.C. 461-66; detailed procedural requirements for the conduct of elections of labor organization officers, see LMRDA, sections 401-03, 29 U.S.C. 481-83; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, loans by a labor organization to officers or employees, employment by a labor organization of certain convicted felons, and payments to employees for prohibited purposes by an employer or labor relations consultant, see LMRDA, sections 501-05, 29 U.S.C. 501-05; and prohibitions against extortionate picketing and retaliation for exercising protected rights, see LMRDA, sections 601-11, 29 U.S.C. 521-31. As explained in the Department's 2002 proposal and 2003 rule (67 FR 79280, 79290; 68 FR at 58374), the reporting regimen had hardly changed in the more than 40 years since the Department issued its first reporting rule under the LMRDA. The original rule was published in 1960. See 25 FR 433, 434 (1960).

Section 201 of the LMRDA requires labor organizations to file annual, public reports with the Department, detailing the labor organization's financial condition and operations during the reporting period, and, as implemented, identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving \$10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of \$250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements. 29 U.S.C. 431(b).

The statute requires that such information shall be filed "in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations." *Id.* This information is reported on the Form LM-2 by labor organizations that have \$250,000 or more in total annual receipts.

Section 202 of the LMRDA requires all labor organization officials to annually disclose any income or interests, as there identified, they have received that pose an actual or potential conflict of interest. *See* 29 U.S.C. 432. A labor organization official must also identify any income paid to, or financial interests held by, the official's spouse or minor children, if such payment is from or interest is held in a business or company under circumstances that could give rise to a conflict of interest. *Id.* The section 202 information is reported on the Form LM-30. Section 203 of the Act also requires an employer, with certain exceptions, to annually file a report showing in detail, the date and amount of any payment, loan, promise, agreement or arrangement to any labor organization or representative of a labor organization and a full explanation of any such transaction. *See* 29 U.S.C. 433. The section 203 employer information is reported on the Form LM-10.

With regard to each of these reports, the LMRDA states that the Secretary of Labor shall "prescribe the[ir] form and publication \* \* \* and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as [it] finds necessary to prevent the circumvention or evasion of such reporting requirements." 29 U.S.C. 438. This final rule adopts the Form T-1 to require labor organizations to report on certain section 3(l) trusts so as to provide labor organization members with an accounting of how funds are invested or otherwise expended by the trust. The Form T-1 provides transparency of labor organization finances and effectuates the goals of the LMRDA.

### C. Overview of the Form T-1 Final Rule and Reasons for the Rule

This final rule provides that the largest labor organizations, those with total annual receipts of \$250,000 or more, must file a Form T-1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, has management control or financial dominance. For purposes of this rule, a labor organization must file a Form T-1 for a trust if it alone or in

combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization.

The Form T-1 requires that the labor organization itemize major transactions of the trust during the annual reporting cycle on two schedules: Schedule 1, which would separately identify any individual or entity from which the trust received "major receipts" of \$10,000 or more, individually or in the aggregate during the reporting period; and Schedule 2, which would separately identify any entity or individual that received "major disbursements" of \$10,000 or more, individually or in the aggregate, from the trust during the reporting period. The final rule does not require itemization of receipts by a trust made pursuant to a collective bargaining agreement or disbursements made by the trust pursuant to a written agreement that specifies the detailed basis on which the payments are to be made by the trust. The Form T-1 includes a Schedule 3 that requires disclosure of the names of all officers of the trust, all employees of the trust who receive \$10,000 or more during a reporting period, and all direct or indirect disbursements to each of these officers and employees.

The Form T-1 provides for a number of exemptions or alternative means of compliance with the reporting requirement. No Form T-1 is required for any trust that meets the statutory definition of a labor organization as such trust would already file a separate Form LM-2, LM-3 or LM-4. An exemption is provided for trusts that are established as a Political Action Committee (PAC) or as a political organization under section 527 of the Internal Revenue Code, 26 I.R.C. section 527, provided timely, complete and publicly available reports are filed with the appropriate federal or state agency. This final rule includes an exemption for trusts that constitute a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.*, and for trusts where the plan administrator is required to file an annual report under ERISA (Form 5500 exemption). The requirements of the Form 5500 exemption are discussed more fully below. The final rule also includes an alternative means of compliance by filing an audit of the

trust, provided the audit is prepared according to standards set forth in the Form T-1 instructions and the audit is filed with a Form T-1 with Items 1-15 and Items 26 and 27 completed.

This final rule will make it more difficult for a labor organization, its officials, or other parties with influence over the labor organization to avoid, simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization. Labor organization officials and trustees both owe a fiduciary duty to their labor organization and the trust, respectively, but the Department's case files reveal numerous examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.<sup>1</sup> The Form T-1, by disclosing information to labor organization members, among the true beneficiaries of such trusts, will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts. *See* Archibald Cox, *Internal Affairs of Labor Organizations Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 827 (1960) ("The official whose fingers itch for a 'fast buck' but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does").

Because the labor organization's obligation to submit a Form T-1 overlaps with the responsibility of labor organization officials to disclose payments received from the trust (*see* 29 U.S.C. 432), the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected. Moreover, given the increased transparency that results from the Form T-1 reporting, in some instances the Form T-1 reporting may cause the parties to reconsider the primary conduct that would trigger the reporting requirement. As discussed above, the LMRDA's primary reporting obligation (Forms LM-2, LM-3, and LM-4) applies to labor organizations as institutions;

<sup>1</sup> The fiduciary duty owed by trustees and others to refrain from taking a proscribed action has never been thought to be sufficient by itself to protect the interests of a trust's beneficiaries or a principal. Although a fiduciary's own duty to a trust's beneficiaries, like the duty owed by an agent to a principal, include disclosure and accounting components (*See Restatement (Third) of Trusts* § 2; *Restatement (Third) of Agency* § 8.01 (T.D. No. 6, 2005) *et seq.*; *see also* 1 American Law Institute, *Principles of Corporate Governance* § 1.14 (1994)), public disclosure requirements, government regulation, and the availability of civil and criminal process, complement and help ensure a trustee's observance of his or her fiduciary duty.

other important reporting obligations under the LMRDA apply to officers and employees of labor organizations (Form LM-30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the labor organization they serve, and to employers who must report payments to labor organizations and their representatives (Form LM-10). See 29 U.S.C. 432; 29 U.S.C. 433. Thus, requiring labor organizations to report the information requested by the Form T-1 rule provides an essential check for labor organization members and the Department to ensure that labor organizations, their officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports related to trusts are not required.

Both historical and recent examples demonstrate the vulnerability of trust funds to misuse and misappropriation by labor organization officials and others. The McClellan Committee, as discussed above, provided several examples of labor organization officials using funds held in trust for their own purposes rather than for their labor organization and its members. Additional examples of the misuse of labor organization benefit funds and trust funds for personal gain may be found in the 1956 report of the Senate's investigation of welfare and pension plans, completed as the McClellan Committee was beginning its investigation. See *Welfare and Pension Plans Investigation, Final Report of the Comm. of Labor and Public Welfare*, S. Rep. No. 1734 (1956); see also Note: *Protection of Beneficiaries Under Employee Benefit Plans*, 58 Colum. L. Rev. 78, 85-89, 96, 107-08 (1958). In the most comprehensive report concerning the influence of organized crime in some labor organizations, a presidential commission concluded that "the plunder of labor organization resources remains an attractive end in itself. \* \* \* The most successful devices are the payment of excessive salaries and benefits to organized crime-connected labor organization officials and the plunder of workers' health and pension funds." President's Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions* 12 (1986).

The enactment, administration, and enforcement of ERISA has ameliorated much abuse, but many section 3(l) trusts are not covered by ERISA and the annual reporting under ERISA serves a different purpose than the reporting

under the LMRDA. The Department has discovered numerous situations, as illustrated by the following examples, where funds held in section 3(l) trusts have been used in a manner that, if reported, would have been scrutinized by the members of the labor organization and this Department:

- A case in which no information was publicly disclosed about the disposition of tens of thousands of dollars (over \$60,000 on average per month) by participating locals into a trust established to provide statewide strike benefits. No information was disclosed because the trust was established by a group of labor organization locals and not wholly controlled by any single labor organization.

- A case in which a credit union trust largely financed by a local labor organization had made large loans to labor organization officials but had not been required to report them because the trust was not wholly owned by any single local. (One local accounted for 97 percent of the credit union's funds on deposit). Membership in the credit union was limited to members of three locals; all of the credit union directors were local officials and employees. Four loan officers, three of whom were officers of the Local, received 61 percent of the credit union's loans.

Under the final rule, each labor organization in these examples would have been required to file a Form T-1 because each of these funds is a 3(l) trust. In each instance, the labor organization's contribution to the trust, including contributions made on behalf of the organization or its members, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of \$10,000 or more (whether singly or in the aggregate), the labor organization would have been required to provide the name and business address of the individual or entity involved in the transaction(s), the type of business or job classification of the individual or entity, the purpose of the receipt or disbursement, its date, and amount. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages, the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest, and the extension

of any loans or credit to any employee or officer of the labor organization at terms below market rates, and any disbursements to trust officers and to employees of the trust who received more than \$10,000 from the trust.

The need for the Form T-1 is also demonstrated by additional examples of improper administration and diversion of funds from section 3(l) trusts. Labor organization officials in New York were convicted in a "pension-fund fraud/kickback scheme" where labor organization officials were bribed by members of organized crime to invest pension fund assets in corrupt investment vehicles. The majority of the funds were to be invested in legitimate securities, but millions of dollars were placed into a sham investment, which was to be used to fund kickbacks to the labor organization officers, while the return on investment from the majority of the legitimately invested assets would cover the amounts lost as kickbacks.

*U.S. v. Reifler*, 446 F.3d 65 (2d Cir. 2006); see *The Final Report of the New York State Organized Crime Task Force: Corruption and Racketeering in the New York City Construction Industry* (1990) 27-29, 91-92 (describing devices typically used by labor organization officials and third parties to divert trust funds for their own enrichment).

In another case, nepotism and no-bid contracts depleted a labor organization's health and welfare funds of several million dollars. The problems associated with the fund included, among others, paying the son-in-law of a board member, a local labor organization official, a salary of \$119,000 to manage a scholarship program that gave out \$28,000 per year; paying a daughter of this board member \$111,799 a year as a receptionist; and paying \$123,000 for claims review work that required only a few hours of effort a week. See Steven Greenhouse, *Laborers' Union Tries to Oust Officials of Benefits Funds*, N.Y. Times, June 13, 2005, at B5. If the Department's proposed rule had been in place, the members of the affected labor organizations, aided by the information disclosed in the labor organizations' Form T-1s, would have been in a much better position to discover the improper use of the trust funds and thereby minimize the injury to their stake in the trust. Further, the fear of discovery might have deterred the wrongdoers from engaging in the offending conduct in the first place.

As the foregoing discussion makes clear, the Form T-1 rule, as set forth in this final rule, will add necessary safeguards to deter circumvention and evasion of the LMRDA's reporting

requirements. It will be more difficult for labor organizations and complicit trusts to avoid the disclosure required by the LMRDA. Labor organization members will be able to review financial information they may not otherwise have had, empowering them to better oversee their labor organization's officials and finances as contemplated by Congress.<sup>2</sup>

### III. Comments on the Proposal and the Department's Response to the Comments

#### A. Determining Management Control and Financial Dominance

The final rule adopts a modified management control and financial dominance test for determining those trusts for which a labor organization is required to file the Form T-1.

The Department has clarified the test to better identify how to determine whether a labor organization's contributions to the section 3(l) trust during a reporting period trigger a reporting obligation. As a general rule, a labor organization must file a report only if it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization. The Department has also modified two terms used in the proposed rule in determining whether a labor organization must file a Form T-1 for a section 3(l) trust by:

- Substituting "receipts" in place of "revenues," the term used in the proposal; the change addresses accounting concerns raised by some commenters; and
- Substituting the phrase "contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions" in place of "contributions made on behalf of the labor organization or its members shall be considered the labor organization's contribution"; this change clarifies that only contributions by employers that are required under an agreement negotiated by labor organizations should be counted as labor organization contributions and that other

<sup>2</sup>The instructions to the Form LM-2 were published as part of the 2003 final rule. The instructions contain some information relating to the Form T-1. The Department will revise the relevant portions of the Form LM-2 instructions to conform with today's final rule.

contributions, including contributions made by employees themselves should not be counted as labor organization contributions.

The Department received numerous comments on the proposed management control and financial dominance test. Most commenters opposed the proposed test, focusing on its application to Taft-Hartley trusts.<sup>3</sup> Commenters asserted that the proposal was contrary to the decisions in court challenges to the Department's earlier efforts to establish a Form T-1: *AFL-CIO v. Chao*, 409 F.3d 377 (DC Cir. 2005) (2003 final rule); *AFL-CIO v. Chao*, 496 F. Supp. 2d 76, 90 (D.D.C. 2007) (2006 final rule); violated ERISA or at least created unnecessary burden for section 3(l) trusts subject to ERISA; ignored the legal status of trusts and the fiduciary duty that trust officials owe to the trust exclusively, not to the labor organizations or employers participating in the trust; and mistakenly characterized contributions by employers on behalf of employees to the trusts as contributions by or on behalf of the participating labor organizations. Some commenters expressed concern about practical difficulties associated with the proposal, including how to differentiate between labor organization members and others as beneficiaries under the trust and how to measure the trust's revenues during a reporting period to determine whether labor

<sup>3</sup>Labor organizations hold financial interests in various types of section 3(l) trusts, some of which they jointly administer with employers and others that are wholly administered by labor organizations or a trustee or trustees selected by labor organizations. Although the Department received numerous comments about its proposal, none suggested that the test was inappropriate for trusts other than those operated jointly with employers. The comments instead focused on the application of the test to "Taft-Hartley" trusts, *i.e.*, joint labor organization and employer trusts established pursuant to section 302 of the Taft-Hartley Act. 29 U.S.C. 186(c)

It deserves emphasis that the managerial control test will not trigger a Form T-1 filing requirement for Taft-Hartley funds because they have boards whose directors are divided equally between employers and labor organizations. (The managerial control test requires labor organizations to appoint a majority of the board.) Thus, only where the labor organization or a combination of labor organizations are responsible for a majority of the receipts of the trust (financial dominance test) will a Form T-1 be required for the trust, and, as discussed later in the text of this preamble, this will apply in the relatively small number of instances where a Taft-Hartley fund does not fall within the exemption for entities filing the Form 5500. Although many commenters asserted, in effect, that labor organizations should not have to file a Form T-1 for any Taft-Hartley trust, they fail to acknowledge, as further discussed in the text of the preamble, that the DC Circuit recognized the Department's ability to fashion a reporting obligation based *either* on managerial control or financial dominance.

organization contributions constitute a majority of such revenues.

#### Whether the Management Control and Financial Dominance Test Is Justified and Consistent With Form T-1 Court Decisions

A Member of Congress expressed a concern—which is representative of several other comments—that the Department's proposal failed to heed the instructions provided by the court of appeals and the district court in the above cited cases. With respect to the 2006 rule, the same commenter stated:

Without any explanation or justification \* \* \* the 2006 final rule stated that in order to determine whether unions have financial domination over a trust, "contributions by an employer on behalf of the union members as required by a collective bargaining agreement are considered to be contributions of the union as are any contributions otherwise made on the union's behalf." *Id.* at 57,746. By counting employers' contributions to trusts as union contributions, the rule continued to require disclosure from the vast majority of trusts in which unions are interested, since employers routinely make the majority of contributions to thousands of multi-employer Taft-Hartley funds that provide pension, health, and other benefits to union workers.

Another commenter asserted that the Department's proposal "is based on a basic misunderstanding of collective bargaining." A third commenter described the Department's proposal as based on the mistaken basis that "employers have no interest in how a trust invests and spends its money." The Department disagrees with the assertion that the determination that a labor organization has financial dominance based on employer contributions pursuant to a collective bargaining agreement is either unexplained or unjustified. The "financial dominance" test was developed in response to the DC Circuit's opinion in *AFL-CIO v. Chao*. In that case, the court vacated the Department's 2003 Form T-1 final rule (68 FR at 58374) on the ground that the Department exceeded its authority by "requiring general trust reporting." *Id.* at 378–79, 391. As explained in the NPRM, the court held that "absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations." 73 FR 11757.

The NPRM further explained:

[T]he court focused its inquiry on the extent of the labor organizations' relationship

with section 3(l) trusts and indicia of their management control or financial domination of the trusts. *Id.* at 388–89. \* \* \* [T]he appeals court found that the Secretary had not demonstrated how a labor organization's contribution of \$10,000, an amount that could be infinitesimal given the trust's other contributions, could be indicative of the labor organization's ability to exercise any effective control over the trust.

\* \* \*

Under this proposal, management domination or financial control is determined by looking at the involvement of all labor organizations contributing to or managing the trust. As discussed above, the Department's experience, as noted by the DC Circuit in its 2005 opinion, demonstrates that participating labor organizations may "retain a controlling management role, [even though] no individual union wholly owns or dominates the trust." 409 F.3d at 389. This occurs, for example, where a trust is created from the participation of several labor organizations with common affiliation, industry, or location, but none alone holds predominant management control over or financial stake in the trust. Absent the Form T–1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM–2 and the members of these labor organizations would continue to be denied information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so. A rule directed to preventing a single labor organization from circumventing the law must, in all logic, be similarly directed to preventing multiple labor organizations from also evading their legal obligations.

73 FR at 11761. The NPRM also explained:

[T]ypically the establishment of such trusts and their funding is set through collective bargaining. Such payments comprise a portion of the employer's labor expenses, along with salaries, wages, and employer administered benefits. Thus, the money paid into the trusts reflects payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts.

*Id.*

With respect to the Department's current proposal, a Member of Congress expressed the following opinion:

The Department \* \* \* does not explain how an employer's contributions to an employee benefit fund (which is jointly administered by labor and management trustees) on behalf of its employees could cause a union to exercise such financial domination. The Department's failure to explain the legal and empirical justifications for this controversial policy [has] deprive[d] interested parties of the opportunity to provide meaningful comments on the proposal and test the Department's analysis. In addition, because the District Court noted

that the question of whether an employer's trust contributions cause union financial domination of trusts is an "empirical" question, the Department's failure to present any empirical information makes it very likely that the District Court will vacate the rule for a third time.

Another commenter stated that the Department relied heavily on a presumption that employer contributions to jointly-trusted funds are tantamount to union contributions for the purposes of establishing "union domination" of the trusts, adding that unions cannot unilaterally compel employers to make contributions.

The NPRM explained the Department's rationale for establishing employer contributions as indicia of financial control over a trust by labor organizations. The NPRM sketched the contemporary and historical instances of the diversion of trust funds to labor organization officials and third parties working with them, including instances of trusts funded with employer contributions and theoretically subject to the control of trustees appointed by labor organizations and employers and subject to strict fiduciary duties. Trusts that are set up pursuant to collective bargaining agreements between a labor organization and the employer, the terms of which, and level of contributions to, are established in those agreements are subject to considerable influence by the labor organization.<sup>4</sup> At the same time, the Department fully recognizes that labor organizations do not have a free hand in setting contribution amounts. As several commenters recognized, the amount of an employer's contributions to such a trust is part of the employer's total labor costs. How the employer's "labor outlay" is allocated is of relatively greater concern to the labor organization than the employer, a factor that directly affects the amount of a trust's funding, especially to the extent that money is allocated on some basis, such as training, that does not serve equally

<sup>4</sup> In its proposal, the Department noted that in other contexts, effective, de facto, or practical control is an appropriate measure of control, explaining that such a standard would also be consistent with the DC Circuit's opinion. In the proposal, the Department observed that some legal commenters had expressed the view that practical control over many Taft-Hartley trusts had been ceded to labor organizations. 73 FR at 11762. The Department invited comment on whether this observation was accurate and, if so, for this reason or other independent reasons, whether the Department should establish a reporting threshold that is based on less than predominant labor organization control over a section 3(l) trust. No commenter supports this observation as accurate and several stated that it was contrary to their experience. As such the Department has retained the filing thresholds contained in the NPRM instead of adopting lower thresholds.

each particular individual's interests, such as where there is an across the board increase in health benefits or in the hourly rate of pay. As such, contributions paid into the trust by employers provide an effective gauge of the labor organizations influence over a trust's financial operations.

In order to prevent circumvention or evasion for purposes of reporting, it is necessary to equate employer payments to the trust on behalf of employees as contributions by the labor organization, not in the sense that the contributions are the property of the labor organization, but rather that the amount of those contributions serves as a proxy for measuring the labor organization's influence over the trust. As the D.C. Circuit explained, notwithstanding a trust's funding by an employer, such trusts are properly regulated by the Department under 29 U.S.C. 208, because "[f]or such trusts, the union has used its bargaining power to establish the trust, to define the purposes for which funds may be used, to appoint union representatives to the governing board \* \* \* and to obligate the employer to direct funds to the trust's account." *AFL-CIO v. Chao*, 409 F.3d 387. Under the proposed and final rule, in contrast to the 2003 rule, a labor organization is required to file a Form T–1 only where the labor organization has predominant managerial control over the trust or the trust's revenues are "dominated by union member funds," *i.e.*, funds contributed on their behalf by an employer. *See* 403 F.3d at 391.

Inasmuch as Taft-Hartley trusts by definition are funded by employer payments under these agreements, the commenters' assertion, in essence, is reduced to the proposition that Taft-Hartley trusts cannot be subject to the Form T–1 reporting obligation given the source of their funding. This position, however, ignores the D.C. Circuit's rejection of this theory. 409 F.3d at 387 ("[Section 3(l)]'s terms do not dictate a narrow conception of union financial operations such that as the AFL-CIO maintains, Taft Hartley \* \* \* plans funded by employer rather than union contributions \* \* \* would be beyond the reach of [the Department's] authority under section 208"). Moreover, this position also lacks support under the district court's decision in *AFL-CIO v. Chao*, 496 F. Supp. 2d 76 (D.D.C. 2007) (vacating the 2006 Form T–1 Final Rule on procedural grounds). That decision simply noted that the AFL-CIO had asserted that the Department's determination to include employer contributions as part of a labor organization's financial stake in a trust lacked an "empirical basis." *See* 496 F.

Supp. 2d at 90. The court did not suggest that it agreed with the assertion. *Id.* This result is consistent with D.C. Circuit's recognition of the Department's authority to require labor organizations to report on the financial operations of Taft-Hartley trusts and the Court's acknowledgment of the Department's finding that a joint training fund (Taft-Hartley trust) could be required to file a Form T-1. *See* 409 F.3d at 387. As observed by the district court, "[t]he DC Circuit's 2005 decision \* \* \* left the Secretary ample discretion in fashioning a new rule" and that "included within the bounds of that discretion \* \* \* was the decision to equate employer contributions made pursuant to a collective bargaining agreement with contributions from the unions themselves." 496 F. Supp. 2d at 87. Additionally, as discussed above, the Department's position fully recognizes that the funding of section 3(l) trusts is dependent upon collective bargaining. Because the amount of the contributions to a trust is tied directly to the collective bargaining agreement, it is entirely appropriate to use the payments made by an employer pursuant to that agreement as a proxy for measuring the influence of the labor organization over the trust. Where those contributions comprise a majority of the trust's receipts, it is also entirely appropriate to require labor organizations to file a Form T-1.

Under the final rule, management control or financial dominance is determined by looking at the involvement of all the labor organizations contributing to or managing the trust. As noted by the D.C. Circuit, the Department's experience demonstrates that participating labor organizations may "retain a controlling management role, [even though] no individual union wholly owns or dominates the trust." 409 F.3d at 389. This occurs, for example, where several labor organizations with common affiliation, industry, or location, participate in a trust, but none alone holds predominant management control over or dominates the trust financially. Absent the Form T-1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM-2, thereby denying members of the participating labor organizations information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially

dominates a trust, then a group of labor organizations may also be capable of doing so.

#### Whether the Management Control and Financial Dominance Test Is Necessary in Light of, and Can Be Reconciled With, Other Regulatory Regimes

Commenters asserted that the proposal exceeds the Department's authority under the LMRDA and ignored ERISA's effectively exclusive regulation of Taft-Hartley trusts.

Some commenters stated that Congress did not intend the Department to regulate employee benefit trusts under the LMRDA, and instead sought to regulate these trusts, mandate disclosure, and prevent misconduct through ERISA and the Welfare and Pension Plans Disclosure Act of 1958 (WPPDA), the pension law that preceded ERISA.<sup>5</sup> Accordingly, the commenters assert that the Department should withdraw its proposed financial dominance test, which has the primary effect of imposing LMRDA reporting requirements on ERISA plans.

Most of the commenters objected to the financial dominance test on the ground that the trustees of a Taft-Hartley trust owe an absolute duty of loyalty to the trust—to the exclusion of any duties to either the labor organization or the employer. They explained that the funding of the trust by agreement between the labor organization and the employer does not evince labor organization (or management) control over the trust.

There is no merit to the claim that ERISA was intended to supplant the LMRDA insofar as requiring labor organizations to report on the financial interests of trusts in which they hold management control or financial dominance. Section 514(d) of ERISA states: "Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States [with exceptions not here pertinent] or any rule or regulation issued under any such law." 29 U.S.C. 1144(d). The WPPDA contained a similar provision, casting doubt on the assertion that these Acts

<sup>5</sup> A commenter asserted, without elaboration, that the Department's proposal violates section 302(c) of the LMRA. The Department disagrees with this statement. As evinced by section 208 of the LMRDA, Congress expressly recognized the Department's authority to require labor organizations to report on the financial interests of section 3(1) trusts. Moreover, there is a clear distinction between the reporting requirements of the LMRDA and the substantive requirements of section 302(c); that section strictly limits payments by employers to trusts in which labor organization have an interest without indicating that these requirements would "preempt" reporting requirements of the LMRDA or ERISA.

constrain the Department's authority under the LMRDA. *See* WPPDA section 10(b) (72 Stat. at 1003 (1958) (WPPDA does not exempt any person from any duty under any present or future federal law affecting the administration of employee welfare or pension benefit plans)). In the Department's view, the LMRDA and ERISA serve complementary purposes. There also is an evident similarity between the duty labor organizations officials owe to their labor organization and the duty trust officials owe to their trust.

Contrary to an implicit premise underlying many of the comments that ERISA and the LMRDA are co-extensive insofar as labor organization-related trusts are concerned, ERISA applies to only a subset of the section 3(l) trusts. Some section 3(l) trusts are not covered at all by ERISA. Title I of ERISA covers only pension and "employee welfare benefit plans" established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or (3) both. 29 U.S.C. 1003(a). While there is considerable overlap between section 3(l) trusts and ERISA "employee welfare benefit plans," some funds in which labor organizations participate fall outside ERISA coverage, including strike funds, recreation plans, hiring hall arrangements, and unfunded scholarship programs. 29 CFR 2510.3-1. Other section 3(l) trusts that are subject to ERISA are not required to file the Form 5500 or file only abbreviated annual reports. *See, e.g.,* 29 CFR 2520.104-20 (welfare plans with fewer than 100 participants); 29 CFR 2520.104-26 (unfunded dues financed welfare plans); 29 CFR 2520.104-27 (unfunded dues financed pension plans). *See also* Reporting and Disclosure Guide for Employee Benefit Plans, U.S. Department of Labor (2004 ed.), available at <http://www.dol.gov/ebsa/pdf/rdguide.pdf>.

Several commenters stated that section 302 of the Labor Management Relations Act (Taft-Hartley Act) contains structural requirements designed to avoid any possibility of labor organization dominance, including a requirement that payments must be held in trust for the sole and exclusive benefit of employees and their dependents, and a requirement of an annual audit. They assert that section 302 was enacted precisely "to ensure that the funds in such a trust are not used as a labor organization 'war chest'." *NLRB v. Amax Coal Co.*, 453

U.S. 322 (1981). By definition, therefore, they argue that trusts that are subject to section 302 cannot be subject to labor organization dominance and therefore pose no risk of “circumvention or evasion” of the LMRDA’s reporting requirements. In the NPRM, the Department explicitly recognized the fiduciary duties that apply to trustees under ERISA. Nothing in the proposal suggested that trustees routinely ignore these duties and put the interests of their labor organizations or their own interests ahead of their obligation to the trust. The Department recognizes that most trustees faithfully observe their duties. Nonetheless, it cannot be doubted that there are also instances where those duties are ignored with the attendant loss of funds held in trust for the labor organization and its members.

This rule is prophylactic; as such, of necessity it must require reporting even where trustees faithfully observe their duties. At the same time, its reach is necessary to empower labor organization members to determine whether transactions between the trust and other individuals and entities are proper. In many instances, the rule also allows labor organization members and this Department to determine whether transactions by or with the trust created a reciprocal reporting obligation on labor organization officials and employers who have separate reporting obligations under the LMRDA. As stated in the NPRM, “[b]ecause a labor organization’s obligation to submit a Form T-1 overlaps with the responsibility of the labor organization officials [pursuant to 29 U.S.C. 432] to disclose payments received from the trust, the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected.”

As an additional benefit, the transparency provided by the rule may have the salutary benefit of deterring individuals from engaging in improper or illegal transactions. Neither as proposed nor modified in this final rule does the reporting obligation interfere with ERISA. Indeed, given that labor organizations now have no obligation to file Form T-1 for many if not most trusts subject to ERISA, the arguments against the proposal on this basis lose much of their force.

Where trusts are not subject to ERISA or not required to file the annual reports required of most ERISA-regulated trusts, the Form T-1 reporting obligation provides labor organization members their first opportunity, in most instances, to receive an annual report on

the financial operations of their labor organization’s section 3(l) trusts.

#### Whether the Management Control and Financial Dominance Test Creates Unwarranted Compliance Difficulties

Some commenters expressed concern about the practical difficulty of determining whether a trust beneficiary was a labor organization member or not. Some commenters noted that although the trusts have records distinguishing between contributions submitted pursuant to collective bargaining agreements—as distinct from contributions submitted on behalf of non-bargaining unit groups, the trusts do not have records permitting them to differentiate employer contributions made on behalf of labor organization members from contributions made on behalf of non-labor organization employees. These commenters stated that in order to provide such data labor organizations would be required to ask participating employers to take on an additional reporting obligation to the plans. A commenter explained that in order to determine whether the 50% revenue threshold was met, the trust and the labor organization would have to exchange records to identify trust participants who are members of the labor organization, a task that would require significant time.

These concerns are based upon a simple misunderstanding of the proposal and are easily resolved. As discussed in the NPRM, 73 FR 11758–61, the labor organization exercises effective control over a trust if it directly contributes the trust’s funds or if it negotiates with an employer for employer funding of the trust. Whether the individuals on whose behalf contributions are made pursuant to a collective bargaining agreement are themselves members of the labor organization is irrelevant. Thus, it is not necessary to determine how many beneficiaries of the trust are members or non-members of the labor organization to determine whether the threshold has been met; instead the relevant factor for making this determination is the amount of receipts contributed pursuant to the collective bargaining agreement, whether made on behalf of members or non-members.

Contributions made pursuant to a collective bargaining agreement by an employer will be considered contributions of the labor organization (as, of course, would contributions by the labor organization itself). The instructions and regulation have been revised accordingly. Consequently, the phrase “contributions made on behalf of the labor organization or its members

shall be considered the labor organization’s contribution” has been revised to read “contributions made pursuant to a collective bargaining agreement shall be considered the labor organization’s contributions.”

Contributions received by the trust on behalf of persons represented by the labor organization but who are not members of the labor organization (such as agency fee payers) would thus be included within the definition of “receipts.” The test is whether the contributions are made pursuant to a collective bargaining agreement. The test is not whether the beneficiaries of the trust are labor organization members.

#### Whether Financial Dominance Should Be Measured by “Receipts” or by “Revenue”

Several commenters asked the Department to clarify how to determine whether the labor organization’s contributions comprised a majority of the trust’s revenues during the reporting period. In the NPRM, the Department, as noted above, framed its financial dominance test in terms of a labor organization’s contributions (more than 50% of the trust’s revenues during the annual reporting period. The term “revenue” was used by the D.C. Circuit in discussing how the Department could properly fashion a reporting obligation where a labor organization or labor organizations financially dominated a trust. See *AFL-CIO v. Chao*, 409 F.3d at 390. The court did not define this term, nor suggest that its usage was to limit the Department to an approach constrained by the technical meaning ascribed to the term by accountants.

Some commenters noted that the term “revenue” has a different meaning than “receipts.” One commenter, noting that accounting professionals use slightly different interpretations of what constitutes “revenue,” proposed the following as included within its reach—contributions, interest and liquidated damages charged for delinquent contributions, all investment income, realized gains, grants, rents, reimbursements and other income, grants and employee elective deferrals to 401(k) and cafeteria plans. Some commenters asserted that if “revenue” is defined in such a way as to include income such as capital gains, interest, dividends and the like, then many trusts will fall in and out of Form T-1 coverage depending on market returns. They explained that this could result in a lack of disclosure in good financial years, and conversely, could require reporting in poor financial years. The resulting shifting reporting requirements

would lead to a lack of consistent reporting on these trusts and create confusion for labor organization members. Thus, for example, if "revenue" includes all amounts received from the sale of securities, even when promptly reinvested or "rolled over," the amount of "revenue" attributable to the trust could easily dwarf any other source of income or receipts, reducing the number of Form T-1 reports filed.

The Department agrees that the rule should be clarified. To address these concerns, the Department has adopted for this purpose the "receipts" test used in the Form LM-2. Thus, the instructions to the Form T-1 now provide that "receipts" means anything actually received by the labor organization within that fiscal year, with the one exception being sales of investments that are promptly reinvested. In that situation, only the capital gain is counted toward the gross receipts figure.

For purposes of the Form T-1, the term "receipts" will include cash, interest, dividends, realized short and long term capital gains, rent, royalties and other receipts of any kind.

It will exclude investment proceeds that are promptly reinvested. Generally, "promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment. This change lessens the likelihood that market fluctuations will move the trust in and out of coverage in a given fiscal year. Market performance volatility will be less likely to affect reporting requirements because receipts will not be registered until gains from the sale of securities are realized.

A commenter pointed out that labor organization members have an interest in the governance of the trusts that extends beyond the fiscal year in which particular contributions were made, suggesting that the financial dominance test should look to a multi-year period to determine Form T-1 coverage. While the Department believes there is some merit to the suggestion, the Department believes that a multi-year approach is unworkable. The key factor to showing financial dominance is the position of the labor organization as an entity that bargains with employers and is thus in a position to exert control over the contributions to the trust. If there are no contributions made in a particular fiscal year it is difficult to show that a labor organization is in a position to financially dominate these trusts. Furthermore, outside the Taft-Hartley

trust context, a labor organization is more likely to be required to file a Form T-1 because it has managerial control over a trust and not because of financial dominance.

Two commenters stated that the Department's test would require reports from single employer trusts (whose contributions are not established pursuant to a collective bargaining agreement) that have equal (labor organization and employer) representation on their governing boards. One of these commenters also stated that some single employer plans, established pursuant to a collective bargaining agreement, are administered without any labor organization involvement. The Department has determined that these plans, and other such trusts that are employer created and employer administered, do not fall within the scope of section 3(l).

#### Whether Elective Deferrals Are Considered in Determining Financial Dominance

One commenter, a 401(k) plan multiemployer defined contribution pension plan, receives payments from employees who have the option to defer a portion of their wages to the plan. Employees have the opportunity, in addition, to control how their funds are invested. The commenter expressed uncertainty over whether these elective deferrals made by the employees themselves are considered labor organization-derived payments that establish financial dominance, arguing that they should not be so treated. The Department agrees that employee-directed payments to the trust should not be treated as labor organization contributions.

#### Managerial Control and Taft-Hartley Funds

The Department received few comments on the managerial control test it proposed. These comments were in the context of trustees appointed to the board of directors of a Taft-Hartley fund. The boards of these funds are allocated half to employer representatives and half to labor organization representatives. As such no Taft-Hartley fund would ever meet the managerial control trigger for filing the Form T-1 as the trigger requires the labor organization to appoint or select a majority of the board before filing is required. However, as discussed above, Taft-Hartley funds could be subject to the financial dominance test.

#### B. Applicability of the Form T-1 Reporting Requirement to Smaller Labor Organizations

The Department proposed a reporting threshold based solely on the size of the labor organization; labor organizations with total annual receipts of at least \$250,000 must file a Form T-1 for a section 3(l) trust, if the labor organization alone or with other labor organizations exercises management control or financial dominance over the trust. The Department received no comments regarding this aspect of its proposal. This final rule maintains this reporting threshold and the Form T-1 reporting requirement only applies to those labor organizations with total annual receipts of at least \$250,000. The Department believes that limiting the Form T-1 reporting requirement to the largest labor organizations responds to concerns that the Form T-1 would impose a substantial burden on smaller labor organizations. By requiring a Form T-1 to be filed only by a labor organization with annual receipts of at least \$250,000, the proposed rule is consistent with the reporting threshold for Form LM-2. The \$250,000 reporting threshold ensures that labor organizations required to file Form T-1 will be better prepared to meet the recordkeeping burden, having already had experience with the recordkeeping and reporting software utilized for the filing of Form LM-2.

#### C. Elimination of Threshold Requirements in Prior Rules

In addition to limiting reporting to labor organizations with at least \$250,000 in annual receipts, the 2003 and 2006 final rules conditioned reporting on a two-part threshold (\$10,000 or greater contribution threshold for the reporting labor organization and a \$250,000 or greater receipts threshold for the trust). In the NPRM, the Department proposed eliminating these thresholds and this final rule does not include a contribution threshold for the reporting labor organization or a receipt threshold requirement for the trust.

Several commenters objected to the removal of the \$10,000 contribution threshold for reporting labor organizations and stated that the threshold should be maintained. Commenters stated that the \$10,000 contribution threshold represented a reasonable determination by the Secretary of the appropriate balance of benefit and burden, i.e. the burden of filing the Form T-1 on labor organizations contributing less than \$10,000 outweighed the marginal

increase in transparency. Commenters asserted that it would be hugely disproportionate to impose the burdensome cost of Form T-1 compliance when a small amount of labor organization funds are at stake. A commenter questioned whether the management control and financial dominance requirements for filing a Form T-1 would alleviate the difficulty in obtaining information from the trusts. Two commenters asserted that the proposed rule did not offer a reasoned basis for the removal of the \$10,000 labor organization contribution threshold. The commenters further noted that there has been no evidence of changed facts or circumstances that would warrant the departure from the threshold requirements of previous proposed Form T-1 rules.

As noted in the NPRM the \$10,000 contribution threshold was included in the 2003 and 2006 final rules in response to concerns about a labor organization's ability to obtain the required information from trusts in which they did not have a substantial stake. The Department believes that limiting the trust reporting requirement to trusts in which a labor organization exercises management control or financial dominance, as discussed above in section A, addresses this concern. Moreover, the Department believes that under the LMRDA labor organization members have an interest in financial transparency related to trusts to which their labor organizations contribute regardless of the amount of the contribution.

The recordkeeping and reporting burdens correspond to the size of the trust. Smaller trusts have smaller burdens in these areas than do large trusts. A member's interest in knowing the details of financial dealings is not diminished simply because the trust is smaller. Even in smaller trusts, members are likely to be interested in the nature and purpose of the trust, the spending decisions of the trust, the money directed to the trust as compared to the wages or wealth of the members, and the extent of the labor organization's control and domination of the trust. The Department's proposal to require reporting by labor organizations with annual receipts of at least \$250,000 tracks the mandatory filing threshold for the Form LM-2. Requiring the filing of a Form T-1 on the same basis as the filing of the Form LM-2 ensures that labor organizations required to file Form T-1 will be better prepared to meet the recordkeeping burden having had experience with the recordkeeping and reporting software utilized for filing the Form LM-2.

The Department was persuaded to change to a filing requirement based on the size of the labor organization rather than amount of contribution to a trust by comments in connection with the 2002 NPRM. Many commenters during the 2002 rulemaking expressed the view that the relative size of a labor organization, as measured by its overall finances, would affect its ability to comply with the proposed Form T-1 reporting requirements.

In proposing to eliminate the \$250,000 receipts threshold for trusts, the NPRM noted that the Department's review of section 3(l) trusts revealed that a number of trusts do not have substantial annual receipts yet still hold large amounts of labor organization derived money. One building trust held \$802,323 in assets, yet had less than \$200 in receipts. Another trust reported \$434,501 in assets, only \$45,285 in receipts, and rental expenses of \$75,483 resulting in net receipts of -\$29,198. Removing the \$250,000 annual receipts threshold provides for the disclosure of significant financial information. As noted in the NPRM, by not including a receipts threshold for trusts labor organization, members will have greater transparency and access to information relating to trusts that hold large amounts of labor organization derived money yet do not receive a significant amount of annual receipts.

Commenters objected to the removal of the \$250,000 receipts threshold for trusts because they argued that it may result in Form T-1 reporting of trusts with insubstantial receipts or assets and result in a burden that may outweigh the benefit of disclosure. Commenters also stated that the proposed rule did not offer enough evidence or a reasoned basis for the removal of the \$250,000 threshold. Specifically, a commenter questioned the Department's examples of building trusts that have significant labor organization derived assets but do not receive significant receipts. A commenter further noted that there has been no evidence of changed facts or circumstances that would warrant the departure from the threshold requirements of previous proposed Form T-1 rules. A labor organization commented that the \$250,000 receipts threshold limited Form T-1 reporting to significant trusts. The commenter asserted that the occurrence of a trust with significant assets but no significant receipts was rare and that the benefits of including such trusts were outweighed by the burden of filing reports on trusts that are insignificant.

After considering the comments in opposition, the Department has concluded that the final rule will not

include the \$250,000 receipts threshold for trusts. Eliminating the \$250,000 in annual receipts threshold for the trust operates to provide information about trusts to labor organization members whose labor organizations have a substantial investment in a trust notwithstanding the absence of significant annual receipts by the trust during the reporting period. The two examples of such trusts provided in the NPRM are illustrative of the problem and were not intended to be an exhaustive list. Like all the examples in the NPRM, they point to the need for disclosure.

The removal of the reporting thresholds will substantially increase labor organization financial transparency and decrease the evasion and circumvention of the LMRDA requirements. Due to the application of the management control and financial dominance thresholds set forth in this rulemaking, the Department believes that the \$10,000 contribution threshold and the \$250,000 annual receipts threshold are unnecessary.

The Department also sought comments on whether it would be appropriate to establish a threshold based on the amount of assets held by a trust, and if so, what amount would be appropriate. Only one comment responded to the Department's question. A labor organization proposed creating such a threshold and setting the threshold at no less than \$250,000 for trust assets, in order to minimize the burden on small trusts. In the absence of significant comment on this point and the Department's further consideration of this alternative proposal, the Department believes the better approach is to continue without an asset threshold. The Department believes that a member's interest in the details of the labor organization's financial dealings is not diminished by the amount of trust assets. A member's interest is more likely to be based on the nature and purpose of the trust, the spending decisions of the trust, the money directed to the trust as compared to the wages or wealth of the members, and the extent of the labor organization's control and domination of the trust. Based on these factors, in this final rule the Department has not established a reporting threshold based on assets held by a trust.

#### *D. Itemization of Receipts and Disbursements*

The Department proposed that the Form T-1 include two itemized schedules for "major" transactions: Schedule 1, which would separately identify any individual or entity from

which the trust received "major receipts" of \$10,000 or more, individually or in the aggregate, during the reporting period; and Schedule 2, which would separately identify any entity or individual that received "major disbursements" of \$10,000 or more, individually or in the aggregate, from the trust during the reporting period. The final rule retains the itemization and aggregation requirements, but no longer requires the itemization of receipts by a trust made pursuant to a collective bargaining agreement or benefit payments made by the trust pursuant to a written agreement specifying the detailed basis on which such payments are to be made. By exempting labor organizations from filing a Form T-1 for those trusts required to file the Form 5500, as discussed below, the Department has substantially reduced the burden associated with this aspect of the rule. Additionally, the Department has clarified some particular reporting requirements, as suggested by commenters.

As stated in the NPRM:

Itemization is an essential component of Form LM-2 and also is integral to Form T-1 as a means to prevent circumvention or evasion of the reporting obligations imposed on labor organizations and labor organization officials. Itemization not only provides members with information pertinent to the trusts, but allows them to better monitor the other reporting obligations of their labor organization and its officials under the LMRDA and to detect and thereby help prevent circumvention or evasion of the LMRDA's reporting requirements. Among other requirements under this proposal, Form T-1 requires a labor organization to identify:

- The names of all the trust's officers and all employees making more than \$10,000 in salary and allowances and all direct and indirect disbursements to them;
- Disbursements to any individual or entity that aggregate to \$10,000 or more during a reporting period and provide for each individual or entity their name, business address, type of business or job classification, and the purpose and date of each individual disbursement of \$10,000 or more; and
- Any loans made at favorable terms by the trust to the labor organization's officers or employees, the amount of the loan, and the terms of repayment.

73 FR 11763. Where certain payments from a business that buys, sells or otherwise deals with a trust in which a labor organization is interested are made to a labor organization officer or employee or his or her spouse, or minor child, the LMRDA imposes on the labor organization officer or employee a separate obligation to report such payments (Form LM-30, as required by 29 U.S.C. 432). Thus, the Form T-1

operates to deter a labor organization official from evading this reporting obligation.

The proposed \$10,000 figure is an outgrowth of the earlier rulemaking efforts and is shaped by the concerns there expressed and the Department's accommodation to those concerns. This amount is a higher amount than the itemization threshold provided for the Form LM-2 (\$5,000). The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, in order to ensure that the information reported is meaningful. See 68 FR at 58389.

The Form T-1 will identify the trust's significant vendors and service providers, i.e., those who make or receive payments of \$10,000 or greater during the one-year reporting period. Labor organization members will be able to utilize the advantages of computer technology to review Form T-1s (and other documents required to be filed under the LMRDA). Electronic filing permits the reviewer to use a search engine to guide the inquiry, allowing review of a potentially large number of itemization reports with relative ease compared to review of the same documents in hard copy. Among other uses, a labor organization member who is aware that a labor organization official has a financial relationship with one or more of these businesses will be able to determine whether the business and the labor organization official have filed the required reports (concerning their relationship as required by sections 202 and 203 of the LMRDA, 29 U.S.C. 432 and 433).

The Department proposed that the itemization threshold for major receipts and disbursements be set at \$10,000 in the aggregate. No exceptions were proposed; however, a special procedure was provided for reporting sensitive information. Therefore, filers would report all trust receipts from any source that aggregate to \$10,000 or more, as well as any disbursements from the trust to any source that aggregate to \$10,000 or more during the trust's fiscal year. One commenter urged the Department to increase the threshold for larger employee benefit plans, and instead base it upon a percentage of assets at the beginning of the year. This commenter also urged the entire elimination of itemization of disbursements for benefit payments, because of the many participants who receive in excess of \$10,000. This commenter also questioned the value of requiring the reporting of disbursements to service providers and payments to parties-in-interest, which are both reported on the Form 5500. Others opposed the

proposed threshold as being too high, and instead would lower it to \$5,000, which, in their view, would increase transparency and align the Form T-1 with the Form LM-2.

The Department adopts the \$10,000 threshold requirement for itemization in Schedules 1 and 2. This amount, in the Department's view, represents a substantial transaction that would be of interest to labor organization members. For that same reason, a percentage threshold would be inappropriate, as it would deny information about substantial transactions to members of labor organizations with considerable assets, information about transactions that might have a significant impact on the labor organization's finances. A percentage-based threshold that is subject to annual fluctuation would lack predictability and complicate a year-to-year comparison of reports. If a percentage test was used based upon a percentage of assets at the beginning of the year, information concerning large trusts would be disclosed in much higher dollar amounts and information from smaller trusts would be reported in smaller amounts. For example, if there are two trusts, one with \$100,000 in assets at the beginning of its fiscal year and the other with \$10,000,000 at the beginning of its fiscal year and the itemization threshold was 1 percent, then the first trust would report any receipts and disbursements that aggregate to \$1,000 or more while the second trust would only report receipts and disbursements that aggregate to \$100,000 or more.

Because knowledge about significant transactions by the trust is an essential element of transparency, the size of the trust should not affect the members' ability to obtain this information. Therefore, the Department adopts a flat dollar threshold of \$10,000 for itemization purposes in order to ensure a uniform level of disclosure regardless of the size of the trust. Additionally, in the Department's view, the difference between the reporting threshold for itemized transactions under the Form LM-2 (\$5,000) and the threshold under Form T-1 (\$10,000) is appropriate because it reduces the reporting burden and because the finances of a trust are less likely to directly impact labor organization members than the expenditures by the labor organization itself. Finally, as the Department said in the NPRM (See 73 FR at 11763-64), the Department will continue to monitor this threshold and may make future adjustments based on experience and economic conditions.

For itemization and reporting purposes, the Department proposed that

a labor organization aggregate the trust's receipts from, or disbursements to, a particular entity or individual during the reporting period. The Department explained that aggregation provides a more accurate picture of a trust's receipts and disbursements because it focuses on the total amount of money received from or paid to an entity or individual, rather than only on individual receipts or disbursements. The Department further explained its view that insofar as such payments are of interest to a labor organization member, there is no difference between a single \$10,000 (or more) receipt or disbursement from one source and several receipts or disbursements from one source totaling \$10,000 or more. Furthermore, aggregation reduces the incentive to break up a "major" disbursement to a single entity or individual in order to avoid itemizing the payment and thereby circumvent the Form T-1 reporting requirements.

Several commenters objected to the aggregation requirement. One commenter suggested that the Department remove this requirement because it requires labor organizations and trusts to tally relatively small amounts with no additional benefit. After considering the comments, the Department has decided to retain the "aggregation" standard for itemization on Schedules 1 and 2. The Department believes that multiple payments to or from the same individual or entity that, combined, surpass \$10,000 in any single reporting year, require separate identification as much as one payment of such amount. The benefit of such "aggregation" is that the labor organization member or other viewer of the Form T-1 will receive a more accurate picture of the financial activity of the trust. The additional burden imposed on the trust and labor organization in tracking these multiple payments is offset by the increased transparency that enables members to know that the trust has made "major" disbursements or has received "major" receipts, whether in the aggregate or in a single instance.

Several commenters opposed the itemization of a trust's receipts. They asserted that it imposed unnecessary administrative burden on the trust without corresponding benefit of disclosure to the labor organization members and the public. Others expressed concerns over potential business competition problems caused by labor organization reporting individual employer contributions to trusts, such as disclosure of detailed manpower information and other business information. Some commenters

opposed itemization of certain kinds of transactions such as receipts of pension funds or the sale of investments because they provided no information of value to members, plan participants, or the public.

Several commenters opposed itemization of *disbursements* by trusts. They asserted that it imposed unnecessary administrative burden on the trust without corresponding benefit of the disclosure to the labor organization members and the public. Several commenters also opposed itemization of particular types of transactions, as they argued that this reporting would offer nothing of value to members and the public. In their view, the Department should exclude, among other items, the purchase of investments and benefit payments, particularly pension benefits from Internal Revenue Service (IRS) tax qualified plans.

After carefully considering the comments, the Department continues to believe that Form T-1 should separately identify major receipts and disbursements of the trust. Based on the comments received, however, the Department has made a number of changes to the rule that should ameliorate, if not eliminate altogether, many of the concerns identified by the commenters.

First, the Department agrees with those commenters who questioned the advantages of reporting customary, bona fide contributions to and payments from pension funds and other benefit plans to participants and their beneficiaries. Thus, the Department has changed the instructions to except such contributions and payments from itemization, if made pursuant to a collective bargaining agreement or pursuant to a written agreement specifying the detailed basis on which such payments are to be made, as explained in more detail below. The Department believes that information about these transactions that are constrained by basic governing documents of the trust—collective bargaining agreements and written agreements specifying the detailed basis on which such payments are to be made—is unnecessary for members to monitor the operation of the trust. As a result, labor organizations are only required to report such plan contributions made pursuant to a collective bargaining agreement and beneficiary payments made pursuant to a written agreement specifying the detailed basis on which such payments are made in the aggregate as part of Items 23 and 24.

Second, the Department has made several other changes that it believes will reduce the burden of reporting itemized receipts and disbursements: the reinstatement of a modified Form 5500 exemption; the clarification that investments that are promptly reinvested are not receipts and disbursements for itemization purposes; the explicit recognition that payments related to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are confidential information not to be reported; and the explanation that filers do not have to itemize benefit payments made to officers and employees of the trust on Schedule 3 of the Form T-1. These changes are discussed in more detail below.

Several commenters opposed the itemization of the sale of investments as a burden on the trust and filer. The Department concludes that excluding proceeds from the sale of investments that are promptly reinvested from individually identified receipts will alleviate much of this burden. The clarification regarding the reporting of "rolled over" investments will reduce many of these receipts below the \$10,000 threshold. This will reduce burden on the trust and the labor organization.

The reinstatement of the Form 5500 exemption has significantly reduced the number of section 3(l) trusts that will file the Form T-1. As discussed in section G(3) of this preamble, labor organizations are not required to file a Form T-1 for their section 3(l) trusts that are required to file the Form 5500. The remaining trusts for which a Form T-1 must be filed, *i.e.*, those trusts that are not required to file a Form 5500, will primarily consist of building trusts, strike funds, and apprenticeship and training funds. Unlike pension and health plans, many of these trusts will have comparatively fewer disbursements, receipts, officers, and employees. For example, strike funds are likely to have few, if any, disbursements unless the labor organization's members are on strike.

The Department believes that there is significant benefit to disclosure to labor organization members of the receipts and disbursements remaining within the scope of the itemization requirement. Specifically, information related to the nature and purpose of transactions in which a trust engages will enable members to actively participate in the governance of their labor organization. Without itemization, members would be denied information critical to monitoring the trust's finances. For example, without itemization, members

would be unable to know the value of the final sale and initial purchase of investments by the trust, as well as the service providers it hires to perform functions of the trust. This separately identified information is important to labor organization members, in part, because they elect the officers who run their labor organization, who in turn will affect the labor organization's funding and operations of the trust over which the labor organization has management control or financial dominance. The financing of these trusts can be used to circumvent or evade the labor organization's reporting requirement and this specified information will empower members to monitor whether or not the trusts are properly investing their money and fulfilling their goals.

Trusts are already tracking most receipts, disbursements, and payments to officials and employees in the regular course of business. However, they may not be currently tracking the information in the detail or structure required by Form T-1 reporting. Therefore, covered section 3(l) trusts may opt to make changes to their accounting systems to track the relevant information in a format that can be provided to the interested labor organization(s) to complete the Form T-1. The Department is not requiring trusts to establish a particular accounting or other system to accomplish this goal. As indicated elsewhere in the document, the labor organization may need to request access to the trust's books and records in order to obtain the information necessary to report information on the Form T-1 in the required detail and structure. Further, as also indicated elsewhere in this document, the Department's Employee Benefits Security Administration (EBSA) advised that it would not consider a plan fiduciary to have violated ERISA's fiduciary duty or prohibited transaction provisions by providing officials of a sponsoring labor organization with financial and other information from the plan's books and records as needed to complete the Form T-1, provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials. Consistent with that conclusion, EBSA further advised that fiduciaries may be able to prudently conclude that it is more efficient and less disruptive of normal plan operations to make adjustments to the plan's information management or accounting software so that the plan can provide information contained in its books and records at a particular level

of detail or in a particular structure, provided the labor organization reimburses the plan for any material costs incurred in making such adjustments. Although some section 3(l) trusts may need to contact their third party recordkeepers to collect information requested by labor organizations for the schedules, this burden should be ameliorated as much of required information will already be kept in the normal course of their businesses. And, for labor organizations whose section 3(l) trusts are required to file the Form 5500, there is no Form T-1 to be filed and therefore no LMRDA reporting burden whatsoever.

#### *E. Disbursements to Officers and Employees*

The Department proposed that labor organizations would disclose on Schedule 3 of the Form T-1 the names and titles of all officers of the trust and report all direct and indirect disbursements to them as well as to all employees of the trust who received \$10,000 or more during the reporting period. The Department adopts Schedule 3 as proposed with clarifications discussed below.

Commenters asked the Department to clarify the meaning of the terms "trust officer" and "trust employee," including whether the trustees are considered "officers" of the trust, and how the terms will be applied to the trust administrator and individuals working under his or her control who might be employed by an entity other than the trust.

The Department has added clarifications to the definitions of "trust officer" and "trust employee" on the Form T-1 Instructions for Schedule 3. The definition of trust officer is adapted from the LMRDA's definition of "officer." Section 3(n) of the LMRDA states in pertinent part: "'Officer' means any constitutional officer [of and], any person authorized to perform the \* \* \* executive functions \* \* \* of a labor organization, and any member of its executive board or similar governing body." 29 U.S.C. 402(n). The instructions to the Form T-1 now provide that for Form T-1 purposes, a "trust officer" means "any person designated as an officer in the trust's governing documents, any person authorized to perform the \* \* \* executive functions \* \* \* of the trust, and any member of its executive board or similar governing body." The language is purposefully broad so that it will include the officials of each trust's governing board, and any other individuals conferred with executive authority under the trust's governing

documents. Typically, this will include the trustees of each trust, and, depending upon the particular trust, may include the trust administrator and other individuals.

Similarly, the definition of a "trust employee" is adapted from the LMRDA's definition of this term. Section 3(f) states that "[e]mployee' means any individual employed by an employer." 29 U.S.C. 402(f). Thus, for Form T-1 purposes, an "employee" means "any individual employed by an employer" that constitutes a section 3(l) trust. These definitions will require a fact-specific inquiry by filers to determine whether trustees, the trust administrator, and other individuals performing service to the trust under its control or the trust's administrator's control are officers or employees of the trust. In most instances, the determination will be resolved without any significant difficulty. Where such individuals are trust officers, or trust employees who received more than \$10,000 from the trust during the reporting period, payments to them, unless otherwise exempted, are required to be reported in the aggregate in Item 24 and by their names in Schedule 3. Where such individuals are not officers or employees, payments to them, unless otherwise exempted, must be reported in the aggregate in Item 24 and separately itemized in Schedule 2 if they aggregate to \$10,000 or more.

Two commenters expressed concern over the heavy burden of reporting disbursements to their trusts' officers and employees. Commenters said that this information is disclosed on the Form 5500. The Department notes that no Form T-1 will be required on behalf of trusts that are required to file a Form 5500. The Department acknowledges that this requirement may impose some increased burden on labor organizations and, where requested by the labor organization, on the remaining section 3(l) trusts, but the Department believes that modern developments in electronic recordkeeping (such as software that assists in tracking financial transactions rather than the costly and time-consuming paper records used in the past) have greatly reduced the burden on labor organizations and trusts in terms of overall reporting and disclosure, and that trusts already keep records on their officers and employees for purposes of reporting under other statutes and for internal purposes. Furthermore, labor organization members could benefit from this information to ensure that their labor organization is not, for example, providing undisclosed additional

compensation to labor organization officials.

Commenters also asked the Department to clarify how to report "indirect" disbursements to health care providers, such as hospital and surgery costs, on behalf of trust officers or employees.

The Department has amended the Instructions for Schedule 3, Column (E), Other Disbursements, as well as the definition of "indirect disbursement," to clarify that benefits payments to the trust officers and employees are not of the type required to be reported in Schedule 3 if made pursuant to a written agreement specifying the detailed basis on which such payments are to be made. Rather, these payments should be reported in Item 24, and in Schedule 2 to the extent that all trust payments to a particular source, in the aggregate, must be separately identified. For example, if a trust makes, in the aggregate, \$10,000 in payments to a particular health care provider on behalf of all of its officers and employees, then the filer would report this aggregate amount separately in Schedule 2 and include it within the disbursement total in Item 24. This clarification should eliminate any concerns related to the potential misleading nature of Column (E), particularly as it relates to protecting the confidentiality under HIPAA of health care provider payments.

#### *F. Protection of Sensitive Information*

In proposing this rule, the Department recognized the need to balance the legitimate privacy interests of individuals receiving payments from section 3(l) trusts and the right of labor organization members to transparency in the financial operations of such trusts. See 73 FR 11764. The Department was particularly concerned about protecting the identity of individuals receiving payments for medical-related and similar expenses of a highly personal nature. The final rule strengthens these protections by eliminating the need to itemize any payments—medical or otherwise—customarily made under and in accordance with the trust's governing documents. This point is addressed in the instructions to the Form T-1 and the regulatory text (revising 29 CFR 403.8). This reporting exclusion, coupled with the availability of the rule's reporting exemption for those trusts that are required to file the Form 5500 (which does not require such itemization), substantially reduces the disclosure of individual-specific information on the Form T-1.

Many commenters expressed concerns relating to the itemization of disbursements, most on privacy or security grounds, or both. Some expressed concern that the posting of such information on the Department's Web site would be intrusive and heighten the possibility of identity theft. They asserted that plan participants and beneficiaries have an "expectation of privacy" and that the trustees of benefit and pension plans are obliged to protect their privacy under ERISA and other state and federal laws. Several commenters referred to the regulations issued by the Department of Health and Human Services (45 CFR 160-164) pursuant to HIPAA, prohibiting the disclosure of "Protected Health Information." Other commenters argued for an exemption of all payments made pursuant to the terms of an employee benefit plan. Another suggested that the Department include in the final rule an exception akin to that provided in the Department's Form LM-30 rule. The commenter noted that the Form LM-30 exempts from reporting benefit payments to officers and employees from a trust that are provided pursuant to a specific written agreement covering such payments. Others expressed doubt about the value of requiring the reporting of routine payments to or by section 3(l) trusts, especially given the voluminous number of such payments by large trusts, notwithstanding the \$10,000 threshold for itemization. Some commenters expressed concern that reporting of employer contributions to trusts could reveal the extent of its business operations to competitors and unnecessarily affect its business interests.

The Department has carefully considered these comments. As noted, the Department crafted the proposed rule with an eye toward protecting the privacy interests of plan participants. The Department has been persuaded that additional protections are appropriate. As discussed in the preamble section relating to itemization, the Department has established a broad exemption for reporting customary payments to and by the trust made in accord with a collective bargaining agreement in the case of payments to the trust or the trust's governing documents in the case of benefits payments by the trust. Thus, for purposes of Schedule 1, Individually Identified Receipts, labor organizations are not required to separately identify any individual or entity from which the trust receives receipts of \$10,000 or more, individually or in the aggregate, during the reporting period, if the receipts

derived from pension, health, or other benefit contributions are provided pursuant to a collective bargaining agreement covering such contributions.

Similarly, for purposes of Schedule 2, Individually Identified Disbursements, the labor organization is not required to itemize benefit payments from the trust to an individual plan participant or beneficiary, if "the detailed basis on which such payments are to be made is specified in a written agreement." See 29 U.S.C. 186(c). These exceptions apply to all section 3(l) trusts, whether jointly administered or not. This will ameliorate concerns about the adverse impact on an employer whose payments into a trust may reveal confidential business information. Where such payments to and by the trust are undertaken in conformance with governing documents, there is less opportunity for improper diversion of funds and evasion of the Act's reporting requirements than where the trust's discretion is less constrained such as approving the sale and purchase of investments, making payments to service providers, and arranging disbursements to parties-in-interest and other third parties. This is true of information regarding receipts as well, as there may be multiple employers who contribute to the trust pursuant to a collective bargaining agreement. Moreover, such information about transactions that are not made pursuant to a specific written agreement is not likely to pose the same danger of jeopardizing private and confidential information or violating laws designed to prevent such occurrence. As a result, labor organizations are only required to report such plan contributions made pursuant to a collective bargaining agreement and beneficiary payments pursuant to a written agreement specifying the detailed basis on which such payments are to be made, in the aggregate as part of Items 23 and 24. The Department believes that the addition of an exception pertaining to beneficiary payments made pursuant to a written agreement specifying the detailed basis on which such payments are to be made will also reduce the administrative burden on trusts and reporting labor organizations. Trusts will not have to compile information pertaining to the potentially thousands of beneficiaries, nor will it have as many complications with existing privacy and other state and federal laws. While the burdens of contacting service providers for those transactions not governed by such an agreement and of reprogramming computer systems to capture this data will still exist, the Department believes that many trusts

already have this information as a result of their normal business practices.

As an additional protection, the Department has clarified the rule to ensure that information maintained by the trusts relating to HIPAA-protected payments, subject to a non-disclosure provision in a settlement agreement, specifically protected against disclosure by state or federal law, or that potentially endangers the health or safety of an individual is not available to labor organization members under the LMRDA's "just cause provision." *See* ; . Notwithstanding these exceptions, as explained in the instructions, the labor organization is required to describe generally the nature of any payments that have not been itemized, *e.g.*, "disbursement of payments on insurance claims," in Item 25 of the Form T-1 (Additional Information) and to include the payments in the total amount reported in Item 23 (Receipts) or Item 24 (Disbursements) of the form.

In the NPRM, the Department proposed to provide labor organizations the same reporting option available under the Form LM-2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as "salts," or its prospective negotiation strategy. The Department further sought comments on whether the confidentiality exception from the itemized reporting requirement should be narrowed, clarified, or removed from the Form T-1. Under the proposed special procedures, the labor organization could choose not to report the information in itemized form provided the filer identified in Item 25 (Additional Information) the general types of information excluded. The Department outlined this procedure in the Form T-1 Instructions for Schedules 1 and 2.

As under the LM-2 instructions, the proposal in the NPRM recognized that a labor organization member has a statutory right "to examine any books, records, and accounts necessary to verify" the labor organization's financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Aggregation of transactions by a labor organization under the Special Procedures for Confidential Information constitutes a *per se* demonstration of "just cause for access to the information" and thus the information must be available to a member for

inspection. 73 FR 11764. The Department invited comments on whether to narrow, clarify or remove this confidentiality exemption from the Form T-1 instructions.

Several commenters specifically addressed the Special Procedure for Reporting Confidential Information, as set forth in the proposed rule and instruction. Two commenters opposed these procedures, arguing that agents (*i.e.*, the labor organization and trust officials) cannot withhold "secret records" or engage in "secret transactions," but rather the principals (*i.e.*, the labor organization members) have a right to see this information. These commenters argued that the proposed procedure allowed labor organizations greater leeway in withholding information than is permitted under the discovery rules of federal civil procedure or the National Labor Relations Board (NLRB)'s application of those rules. One commenter raised concerns over the reporting of job targeting/market recovery fund disbursements, identifying instances where, in its view, unions were improperly using the special procedure to shield from disclosure *any* itemized disbursements relating to their job targeting program, not merely those that arguably would be covered by the special procedure. One commenter supported the confidential information exception because it protects organizing strategies.

The Department's review of Form LM-2 data has indicated that the confidentiality exception is not used by the majority of Form LM-2 filers. However, the Department has found that in some cases where the confidentiality exception is used, large portions of the labor organizations' disbursements are not itemized. For example, one labor organization treated \$360,308.00 in disbursements as confidential information and entered this amount on line 5 of Schedule 17. The \$360,308.00 accounted for 45% of the labor organization's total disbursements. A midsized local labor organization treated \$1,011,863.00 as confidential. This accounted for 49% of the labor organization's total disbursements. Finally, a large local labor organization treated \$5,931,513.00 as confidential. This accounted for 46% of the labor organization's total disbursements. Thus, an undisciplined use of the special procedures in many cases could result in the non-itemization of disbursements of millions of dollars.

The Department understands that labor organizations have an interest in maintaining confidentiality in situations where disclosure would expose an

ongoing or planned organizing or representational campaign. However, this interest must be balanced with the LMRDA's general reporting requirements. Depriving members of information about almost half of their labor organization's disbursements does not promote transparency.

In the 2003 final rule promulgating the Form T-1, the Department recognized that the commenters believed that a confidentiality exemption was needed to protect information on certain transactions from immediate public disclosure. Thus the Department provided an exemption from the normal itemization requirement for reporting of information that would harm an organizing drive or contract negotiation and also provided that, absent unusual circumstances, this exemption should not be applied to information related to transactions for past organizing campaigns or negotiations. The Department in this final rule is not changing the decision that a labor organization should not be required to disclose information that would harm the organization's *prospective* organizing campaigns or negotiations, by disclosing strategy that would otherwise be confidential. However, the Department reiterates that labor organizations may not shield such information from full disclosure after the organizing or negotiations have concluded. Thus, the final instructions for the Form LM-2, and the instructions for the Form T-1, provide that "[a]bsent unusual circumstances information about past organizing drives should not be treated as confidential."

For the reasons discussed, the Department adopts the Special Procedures for Reporting Confidential Information as presented in the NPRM, but reiterates that the procedures require itemized reporting of transactions related to organizing campaigns and negotiations after the confidentiality interest giving rise to the exemption from itemized reporting in these categories has ended. Labor organizations will continue to be able to use the confidentiality procedures to withhold itemized information "that would expose the reporting union's prospective organizing strategy." If the strategy becomes public, the confidentiality privilege no longer applies to the information. Once the organizing campaign or negotiations have concluded, the confidentiality privilege is lifted absent unusual circumstances where disclosure of itemized information would harm an ongoing or prospective organizing campaign or negotiations. As provided, in part, in the Form LM-2 instructions,

under the proposal, labor organizations are permitted to withhold from itemization information that would “expose the reporting union’s prospective organizing strategy” or would “provide a tactical advantage to parties with whom the reporting union or an affiliate union is engaged or will be engaged in contract negotiations.” The instructions direct that information should be disclosed unless the labor organization could demonstrate that its disclosure would cause harm to the organizing drive or contract negotiations; the instructions also advise that absent unusual circumstances information about past organizing drives or contract negotiations should not be treated as confidential.

The Department has considered the suggestion by some commenters that the proposed procedure should be eliminated because of its perceived misuse by some Form LM-2 filers. The commenter’s examples indicate that some labor organizations may have used, or will be tempted to use, the special procedure to hide disbursements that—either at the time they occurred or at the time that the Form LM-2 was filed—posed no danger to the labor organization’s organizing or negotiating strategies.

The Department believes that there is reason to be concerned that the procedures may be misused by some labor organizations. Thus, although, the Department is retaining the Special Procedure for Reporting Confidential Information, the Department reemphasizes that this procedure is to be used sparingly and only in the limited circumstances for which it is provided. The Department will continue to review and monitor the use of the Special Procedures for Reporting Confidential Information. Because of the substantial interest in financial transparency that is compromised if certain information that should be disclosed is kept confidential, the Department will give priority in investigations of violations of the trust reporting rules to those reports in which the exemption is claimed. This will be done to insure that the exemption is not abused. The Department will continue to examine the use of the Special Procedure and, if evidence and experience indicate that it is being abused, may propose to eliminate or narrow it. The Department further notes that the provision of a confidentiality exemption for the Form T-1 does not affect other reporting duties under the LMRDA or other laws.

### *G. Exemptions and Alternative Means of Compliance*

The Department proposed an exemption from the Form T-1 reporting requirement for a trust established as a political action committee (PAC) or an organization established pursuant to Internal Revenue Code section 527 provided that the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law. The Department also proposed a partial exemption where an independent audit of the trust has been conducted in accordance with proposed standards discussed below and the audit is filed with the Department along with a fully completed page 1 of Form T-1. Each of these alternative methods for meeting the labor organization’s Form T-1 obligation provides significant, timely financial information about the trust that is updated on a regular basis (for PAC and section 527 reports, typically more frequently than the Form T-1) and requires the itemization of receipts and expenditures. The proposed rule did not include an exemption for trusts that filed timely and complete Form 5500 reports under ERISA; the Department explained that the information reported on the Form 5500 was not designed to capture information for LMRDA purposes and that many section 3(l) trusts were not subject to ERISA or its reporting requirements.

This final rule, like the proposal, includes the exemptions for trusts that constitute a PAC or a section 527 organization provided that the trusts file timely, complete and publicly available reports as required by federal and state law and includes the partial exemption for those trusts where an independent audit has been conducted as set forth in the instructions. This final rule, unlike the proposal, contains an exemption for those trusts required to file a Form 5500 report, as defined in this rule.

#### 1. Exemption for PAC and 527 Funds

In proposing to exempt labor organizations from filing a Form T-1 for trusts that constitute a PAC or a section 527 organization, the Department explained that the purpose of limiting the filing requirements in this way was to minimize any overlapping obligations that apply to such entities where other statutes required the filing of publicly available reports that contain information roughly comparable to that required by the Form T-1. The Department received no comments on the proposed exemption for a trust established as a PAC or established under section 527 of the Internal

Revenue Code. Thus, the final rule retains the exemption for a trust established as a PAC or an organization exempt under Internal Revenue Code section 527, provided that the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law.

#### 2. Audit Exemption

Under this final rule, a labor organization may use the audit exemption provided the audit meets the requirements described in the Form T-1 Instructions. The audit requirement in this exemption is modeled after section 103 of ERISA, 29 U.S.C. 1023 and 29 CFR 2520.103-1 (relating to annual reports and financial statements required to be filed under ERISA). As noted in the NPRM, the Department recognizes that the audit option may not provide the same level of detail required by the Form T-1. The Department nonetheless believes that this approach is an acceptable trade-off for reducing the overall reporting burden on the labor organization and the section 3(l) trust. Under the audit alternative, a labor organization need only complete the first page of the Form T-1 (Items 1-15 and the signatures of the organizations’ officers) and submit a copy of an audit of the trust that meets all the following standards:

- The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust’s financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.
  - The audit includes notes to the financial statements that disclose:
    - Losses, shortages, or other discrepancies in the trust’s finances;
    - The acquisition or disposition of assets, other than by purchase or sale;
    - Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
    - Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and
    - Loans made to officers and employees that were liquidated, reduced, or written off.
  - The audit is accompanied by schedules that disclose:
    - A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in

comparative form for the end of the previous fiscal year of the trust; and

■ A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

The Department invited comments on the utility and workability of the proposed audit exemption. As with many other aspects of the proposed rule, most of the comments on this issue came from Taft-Hartley trusts. These commenters generally opposed the 90-day filing deadline for the audit exemption because the deadline in most instances would expire before they completed the audits that they are required to perform in order to satisfy their ERISA reporting requirements to file a Form 5500. Under ERISA the annual reports are generally not due until at least 210 days after the close of the ERISA plan year. One commenter stated that because of the complexity of any audit required of trust funds, only in the rarest of instances would an auditor be able to timely satisfy the requirements of the proposed alternative to file the Form T-1. Commenters also stated that the proposal failed to reduce the overall reporting and recordkeeping burden because the Form T-1 itemization requirements are not normally part of audits prepared for these funds.

The Department has partially resolved these concerns by exempting labor organizations from any Form T-1 responsibilities for trusts that are required to file an annual report under ERISA, as discussed below. The availability of this exemption means that most of the commenters will not be obliged to provide information necessary to complete the Form T-1 and thus will be unaffected by the audit requirements that otherwise would remain a concern. For those trusts that are not required to file the Form 5500, the Department has decided to retain this filing exemption as an alternative means of compliance with the rule. The remaining types of entities that will be required to file a Form T-1 under this rule are typically less complex than the trusts required to file a Form 5500 and will have fewer transactions to itemize. Further, the concerns about the itemization burden are addressed because this final rule exempts from the itemization requirement any receipts by a trust made pursuant to a collective bargaining agreement and any benefit payments where a written agreement specifies the detailed basis on which such payments are to be made. As such,

the Department anticipates that the burden imposed by using this filing exemption, while similar to that required for filing the full Form T-1, will nonetheless provide a less burdensome alternative for some filers. This audit exemption is not meant to be the primary means of compliance with the final rule, but rather, is meant as an alternative for those entities that have an audit performed that meets the standards set forth in this final rule. For these reasons, the Department's final rule adopts without change the audit exemption as proposed.

### 3. ERISA Covered Plans Required To File a Form 5500

Under the 2003 and 2006 Form T-1 final rules, a labor organization was not required to file a Form T-1 for a section 3(l) trust if the trust was an employee benefit plan that filed a complete and timely annual report pursuant to ERISA. These rules also stated that "a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report."

The Department proposed to remove this exemption in the NPRM. The proposal noted that the focus of the financial reporting required on the Form T-1 and the Form 5500 are not identical and therefore the Form 5500 was an unsatisfactory substitute for the reporting required under the LMRDA. The NPRM noted that not all section 3(l) trusts are subject to ERISA and thus, under the exemption as provided in the 2003 and 2006 final rules, labor organizations, the public and OLMS investigators would have to spend considerable time and resources to determine whether a section 3(l) trust complied and timely filed the Form 5500. 73 FR 11765. The Department also cited the difference in who was required to sign the Form T-1 and the Form 5500 and the difference in the timing for filing as reason to omit the exemption. 73 FR 11766. The NPRM invited comments on a number of questions related to the removal of the Form 5500 exemption.

The Department received a significant number of comments concerning the Form 5500 and whether the Department should allow an exemption where a section 3(l) trust files a Form 5500. Several commenters asserted that the Form T-1 is duplicative of information already available to labor organization members on the Form 5500.

After consideration of the comments, the Department has decided to include a Form 5500 exemption in the final rule. The Department recognizes that the

Form 5500 may not provide certain details required by the Form T-1. In an effort to respond to concerns of commenters and to meet the objectives of the LMRDA, the Department has fashioned an exemption that differs in some respects from the exemption set forth in the 2003 and 2006 rules. The ERISA annual reporting requirements for a section 3(l) trust that is an ERISA-covered plan are generally satisfied where the section 3(l) trust files the Form 5500 Annual Return/Report of Employee Benefit Plan and any required attachments.<sup>6</sup> Under this final rule, labor organizations will not file a Form T-1 for any section 3(l) trust that is required under ERISA and applicable Departmental regulations to file a Form 5500.

For purposes of this Form T-1 exemption only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. sections 1021 and 1024. The Form T-1 exemption, however, does not apply where an ERISA covered section 3(l) trust is eligible for an exemption from filing a Form 5500 or Form 5500-SF under Department of Labor regulations. This includes those section 3(l) trusts that may file a notice or statement with the Secretary of Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation, even if it does file a Form 5500 or Form 5500-SF. The following sections of title 29 of the Code of Federal Regulations identify the types of ERISA plans that under this final rule would be treated as not *required* to file a Form 5500 for purposes of the Form T-1 filing requirement: § 2520.104-20 (small unfunded, insured, or combination welfare plans), § 2520.104-22 (apprenticeship and training plans), § 2520.104-23 (unfunded or insured management and highly compensated employee pension plans), § 2520.104-24 (unfunded or insured management and highly compensated employee welfare plans), § 2520.104-25 (day care center plans), § 2520.104-26 (unfunded dues financed welfare plans maintained by employee organizations), § 2520.104-27 (unfunded dues financed pension plans maintained by employee organizations), § 2520.104-43 (certain small welfare plans participating in group insurance arrangements), and § 2520.104-44 (large

<sup>6</sup> The Form 5500 and governing regulations applicable beginning with plan years beginning in 2009 were modified on November 16, 2007. 72 FR 64710 (final rule); 72 FR 64731 (notice of adoption of revisions to annual return/report forms). The final rule adopted changes to the Form 5500 and created the Form 5500-SF.

unfunded, insured, or combination welfare plans; certain fully insured pension plans). Therefore, a labor organization must file a Form T-1 for any ERISA-covered section 3(l) trusts that are eligible under these regulations.

All the labor organization and trust commenters objected to the Department's decision to depart from the position it had taken in earlier Form T-1 rulemakings whereby a labor organization was not required to file a Form T-1 for a trust that filed a timely and complete Form 5500. The commenters raised the following points in support of their position: (1) Title II of the LMRDA is not intended to regulate employee benefit plans covered by ERISA; (2) information reported on the Form T-1 is already available on the Form 5500; (3) the benefit of Form T-1 reporting does not exceed the burden it places on labor organizations and trusts; and (4) the Department has failed to show how entities that file the Form 5500 have used these trusts to circumvent LMRDA reporting. A number of the commenters offered alternatives to the complete exclusion of the Form 5500 exemption.

Commenters reviewed the history of legislation governing employee benefit plans, stating their view that Congress never intended to apply the LMRDA's reporting and disclosure requirements to employee benefit plans. They cited section 302 of the LMRA in support of their contention that employee benefit plans are insulated from labor organization control. As related by these commenters, section 302 permits employer payments to an employee benefit plan only if: (1) Such payments are made to a separate trust fund established for the purpose of providing medical or hospital care, pension or retirement benefits, insurance, or for other enumerated purposes; (2) such payments are held in trust for the sole and exclusive benefit of employees; (3) the detailed basis for such payments is set forth in a written agreement with the employer; (4) management and labor are equally represented in the trust's administration; and (5) an annual audit of the fund's assets is conducted by an independent auditor.

Commenters also noted that Congress saw no need to include the transactional details that the proposed Form T-1 requires because it did not include them in the recent Pension Protection Act of 2006 which substantially amended ERISA. A number of commenters suggested that the Department drop the Form T-1 and work with the IRS and the Employee Benefits Security Administration (EBSA) to revise the

Form 5500 as necessary to address any concerns.

The Department has reviewed and considered the concerns expressed about the relationship between the LMRDA reporting requirements and ERISA. By adopting an exemption for section 3(l) trusts that are required to file a Form 5500 the Department has recognized that ERISA is the primary statute for regulating section 3(l) trusts that are covered under that statute. The Form 5500 helps ensure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, have sufficient information to protect the rights and benefits of participants and beneficiaries. While not identical in purpose to the Form T-1, the Form 5500 provides information on assets, liabilities, losses or shortages of funds or other property, acquisition or disposal of goods or property in a manner other than purchase or sale, liquidations, reductions, and write-offs.<sup>7</sup> More importantly, the general ERISA regulatory and enforcement regime, through its civil and criminal provisions, reduces (although it does not eliminate the risk entirely) the ability of labor organizations to use employee welfare or pension plans to circumvent their LMRDA reporting obligations.

This is a change from the 2003 and 2006 Form T-1 final rules which allowed for an exemption so long as the trust had filed a complete and timely annual report pursuant to ERISA. However, framing the exemption as was done in 2003 and 2006 puts the burden on OLMS to determine whether the Form 5500 is complete and timely in order to determine whether the labor

<sup>7</sup> The Department does not agree that the Form T-1 is entirely duplicative of the information available on the Form 5500. While both forms seek financial information about trusts, among other differences, a Form 5500 does not include the itemization of disbursements or receipts required by the Form T-1 and the persons required to sign the Form T-1 and Form 5500 are not identical. Under the Form T-1, the form must be signed by the president and treasurer, or corresponding principal officers, of the labor organization. By comparison, the Form 5500 filed by a section 3(1) trust is signed by the plan's "administrator," as defined in section 3(16) of ERISA. By requiring the labor organization's principal officers to certify the accuracy of the financial report, individuals who may be in a position to use the trust to circumvent their union's reporting requirements will be required to vouch under penalty of perjury to the accuracy of the trust report. The officers' incentive to use the trust to circumvent the LMRDA filing requirements is thereby reduced. Notwithstanding these differences, however, the Department, for the reasons discussed in the text, has determined that the Form 5500 exemption as set forth in the final rule is appropriate.

organization has complied with the Form T-1 requirement.

The Department has not extended the Form 5500 exemption to all trusts that are required to file an annual report under ERISA. Rather, the Form T-1 5500 filing exemption will be available to only those section 3(l) trusts that are required to file the Form 5500. Thus, where ERISA or Department of Labor regulations exempt or allow the plan administrator to take an exemption from filing a Form 5500 or 5500-SF, the labor organization would need to file a Form T-1 for that trust. A Form T-1 would be required even if the plan administrator of such a fund does not take advantage of the opportunity to obtain an exemption, and does, in fact, file a Form 5500 or Form 5500-SF.

The Department believes that the Form 5500 exemption as set forth in this final rule balances the concerns of commenters about burden and duplication between the Form 5500 and the Form T-1 with the Department's concerns regarding the enforcement difficulties associated with the Form 5500 exemption as set forth in the 2003 and 2006 Form T-1 final rules. An exemption that is available to trusts that can choose, year-by-year, whether to file a Form 5500 creates significant enforcement burdens for the Department. Because of differing deadlines for filing the forms, it may be difficult for the Department to determine whether a trust that is not required to file a Form 5500 has, in fact, determined that it will file one for the relevant time period. Moreover, the Department would be required not only to determine whether the relevant trust may be exempt from the Form 5500 requirement, but also would be required to determine whether such trust, in fact, filed anyway before determining whether the labor organization was required to file a Form T-1. In contrast, an exemption that covers only trusts that are required to file a Form 5500 is relatively easy to enforce. The obligation to file a Form 5500 depends on the characteristics of the trust, which can be objectively determined. As such, it is a relatively easy matter to determine whether a trust is required to file a Form 5500. Both OLMS and EBSA would have an interest in correctly identifying trusts required to file a Form 5500, and EBSA has considerable expertise in this area.

In contrast, a trust that may elect to exempt itself from the Form 5500 filing requirements creates an entirely different problem. Only the trust will know whether it will file a Form 5500. Until it files a notice that it is taking the Form 5500 exemption, or its time for

doing so has expired, there are no objective measurements to determine whether a Form 5500 will be filed. As an enforcement matter, therefore, OLMS will regularly be unable to predict by objectively determinable measures whether such a trust will be reported on a Form T-1 or not. This creates difficulty in providing compliance assistance to labor organizations and trusts, and, more significantly, responding to questions and requests from labor organization members about trust reporting. Similarly, labor organizations will not be faced with uncertainty about those trusts for which they must file the Form T-1. The labor organizations' reporting obligation will not be contingent on the choice a plan administrator makes about filing a Form 5500. Under the Form 5500 exemption as adopted by the Department in this final rule, a labor organization will be able at the beginning of its fiscal year to know with certainty whether it should prepare to file the Form T-1 for a particular trust.

The Form T-1 filing exemption for filers who are required to file a Form 5500 responds to concerns about duplication of effort, redundant filing requirements, increased burden, and the discrete roles of the LMRDA and ERISA. The Form 5500 filing exemption adopted in this final rule comports with ERISA, properly takes into account the complimentary roles served by each statute, and reduces reporting burden while providing labor organization members and the public with core information that will help to prevent the circumvention or evasion of the LMRDA's reporting requirements.

#### *H. Public Sector Funded Trusts*

As discussed above this final rule requires Form T-1 reports to be filed by labor organizations with receipts of at least \$250,000 that have an interest in a section 3(l) trust, and alone, or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization. The Department's NPRM provided no exemption from this reporting requirement for any specific type of section 3(l) trust, other than for political action committees and section 527 trusts that file timely and complete reports with appropriate government agencies. As a result, the rule as detailed in the NPRM required that Form T-1 be filed by LMRDA-covered labor

organizations with an interest in a section 3(l) trust that provides a benefit plan for the labor organizations' members employed in the public sector, and which, in some cases, is also made available for wider participation by public sector employees who can join the labor organization and enroll in its benefit plan as a result of their public sector employment. Based on comments received in response to the proposed coverage of such plans, the Department has decided, for the reasons that follow, to provide a specific exemption to the Form T-1 reporting requirements for those labor organizations with a reportable interest in a section 3(l) trust that is covered by the FEHBA. However, as explained below, this exemption applies only to FEHBA-covered trusts, and does not extend to labor organization-sponsored benefit plans not otherwise regulated by the federal government in which state, county, special district or municipal employees may participate.

Two commenters addressed the NPRM's coverage of trusts established to provide employee benefits to public sector employees. The first comment is from a national labor organization representing primarily federal sector postal employees, which sponsors a health benefit plan that is established, administered, funded and maintained by contract between the labor organization and the federal government's Office of Personnel Management (OPM) pursuant to FEHBA. Under FEHBA, the federal government makes an employer contribution to cover the majority of the premium costs of the plan, 5 U.S.C. 8906, and the remainder is paid by employee contributions. The FEHBA health benefits plans offer hospital, medical, surgical and other health benefits to enrollees and their covered dependants. In accordance with FEHBA, only members of a labor organization may enroll in that labor organization's health benefits plan. Therefore, the plan's enrollees are federal employees who are members of the labor organization or associate members who have become members of the labor organization in order to enroll in the health benefit plan sponsored by the labor organization.

The labor organization with a FEHBA-governed plan argues that an exception to coverage under this rule is warranted because FEHBA plans are already subject to significant federal oversight and reporting requirements. In particular, the commenter argues, the oversight is equivalent to, and perhaps more than, the federal reporting requirements, oversight, and

government regulations than are applicable to other entities, such as political action committees or section 527 organizations, that were specifically exempt from compliance in the proposed rule. According to the commenter, FEHBA plans are subject to stringent requirements contained in the contracts with OPM, which are reviewed and approval on an annual basis. In addition, FEHBA plans must file detailed financial reports with OPM on a quarterly and annual basis, and are subject to annual auditing requirements as well as periodic audits by OPM and the OPM Office of the Inspector General in order to ensure the plan's compliance with contract requirements and federal law.

The Department finds persuasive these reasons offered by the first commenter for an exception to compliance with this rule for FEHBA-covered plans. The Department concludes that the interest of members of labor organizations in having access to meaningful information regarding the trusts in which their labor organization has an interest is served by the rigorous federal oversight already in place under FEHBA, without need for additional compliance with this rule. So long as the interests of labor organization members who want to be familiar with the investments and expenditures of their labor organization's trust is satisfied, the Department may reduce the potentially overlapping regulatory burden to covered entities by creating this exception for FEHBA-covered plans. The exception is noted both in the instructions for filing the Form T-1 and the regulatory text (revising 29 CFR 403.8).

The second comment received on this subject was from a local labor organization that represents municipal employees employed by the City of New York. This labor organization sponsors several supplemental employee benefits plans, which were established over the course of several decades pursuant to collective bargaining agreements with the municipal employers. Although the commenting labor organization represents a small number of employees employed in the private sector, the participants of the labor organization's employee benefits funds are only employees of the municipal employers.

Like the first commenter, the local labor organization indicates that its employee benefit funds in which New York City municipal employees participate are already subject to extensive government oversight and control by the Comptroller of the City of New York. Also like the first commenter, this local labor organization

argues that this existing oversight scheme established under local law, including annual audits of which a condensed version is transmitted to the membership of the funds, is sufficient to accommodate any party interested in gathering financial information about the labor organization's employee benefits trusts. However, the Department notes that the information required by local law appears only to be required to be distributed to plan participants, and not labor organization members who belong to the labor organization sponsoring the plans and whose interests are at the heart of this rule. In addition, although the commenter's benefit plans are clearly subject to some governmental oversight, it is infeasible for the Department to examine every state or local oversight scheme to determine whether it requires the reporting and distribution of information sufficient to satisfy the Department's purpose in protecting the members of labor organizations sponsoring such plans. Because each state or municipality may establish differing oversight schemes with differing reporting requirements, which are subject to periodic revision by those state and local governments, it is impracticable for the Department to review this patchwork of regulation to assure the continued protection of the interests of labor organization members. For these reasons, the Department declines to create a broader exception to this rule, beyond the exception noted above for FEHBA plans, for employee benefit plans sponsored by labor organizations for the benefit of public sector employees.

#### *I. Applicability to Multiple Labor Organizations Participating in a Single Section 3(l) Trust*

The Department proposed that each labor organization meeting the reporting threshold will have to submit a Form T-1 to the Department, even though the labor organization's interest in the trust may represent only a relatively small portion of the total contributions made to the trust by labor organizations. The Department received no comments on this aspect of the rule, which is set forth in this final rule without change.

In the NPRM, the Department explained that it had received comments on its 2002 proposal to establish a Form T-1 relating to the participation by multiple labor organizations in a single trust. In response to the 2002 proposal, an international labor organization explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that

would be funded by payments from employers pursuant to negotiated agreements providing for "a-cents-per-hour" contribution for hours worked by each of their employees. As an example, the labor organization discussed a fund with annual contributions over \$300,000 in which seven locals participated. The contributions from, or on behalf of, each local ranged from about \$10,000 to about \$100,000. The fund had four employer and four labor trustees; three from different locals contributing to the trust and a fourth from the labor organizations' parent organization.

The labor organization also explained that it was common for local labor organizations in different crafts (affiliated with different parent bodies) to participate in a fund. It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the labor organization trustees. It stated that in such circumstances it is unrealistic to suggest that any single labor organization or craft controls the trust. It has also been the Department's experience that is not uncommon for multiple labor organizations to participate in a section 3(l) trust without any single labor organization contributing a majority of the trust's revenues. In some trusts, such as strike funds, labor organizations may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by employers, but such funds are established through collective bargaining agreements, and the employer contributions are made for the benefit of the employees working within the bargaining units represented by the participating labor organizations or the employees' beneficiaries. Working from this understanding, the Department crafted its 2003 and 2006 Form T-1 final rules and the proposal set forth in the NPRM to require each labor organization participating in the trust (*i.e.*, those meeting the reporting thresholds) to submit a report on the trust's financial operations.

As noted, the contributions to trusts in which several labor organizations participate typically will consist solely of funds that are contributed on behalf of their members. In other situations, the funds will be contributed by employers on behalf of employees working for these employers who are represented by the participating labor organizations. In many instances, none of the participating labor organizations, by themselves or by virtue of the employers' contributions pursuant to a collective bargaining agreement, contributes a majority of the trust's receipts during a reporting period. As

the Department explained in the NPRM, unless a reporting obligation is imposed on one or more of the labor organizations on some basis other than majority contributions, no labor organization members would receive information on the trust's finances. In its 2002 proposal, the Department illustrated the need for reporting on section 3(l) trusts with four examples in which labor organizations had evaded their reporting obligations through their involvement with such trusts. One of these examples involved the improper diversion of money from a strike fund in which no single labor organization held a controlling interest. The absence of any reporting obligation facilitated the improper disposition of thousands of dollars (over \$60,000 per month) from the strike fund. As this example also demonstrates, disbursements from a trust of pooled labor organization funds affects the contributing labor organizations' financial conditions and operations as clearly as disbursements from a trust funded by a single labor organization. A rule directed to preventing a single labor organization from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one labor organization.

In fashioning this rule, the Department considered two alternatives: fixing the obligation on the labor organization with the greatest stake in the trust; or allowing one of the participating labor organizations to voluntarily take on this responsibility. Either of these approaches would create difficulties in enforcement. As the Department explained in the NPRM, determining which labor organization has the greatest stake in a trust is an uncertain inquiry. There are several ways that this could be calculated, such as percentage of contributions, gross amount of contributions over the life of the trust, number of members receiving benefits, etc. Further, a rule allowing one labor organization to volunteer to file the form (and thus the others to file nothing) would complicate the Department's ability to enforce the reporting requirement when no labor organization has filed a report. In addition, the reporting labor organization may not be the labor organization that is, in fact, using the trust to circumvent or evade its reporting requirement. Finally, this reporting gap could allow some labor organizations and individuals to evade their reporting obligations under the LMRDA.

For these reasons, the Department has determined that where multiple labor organizations appoint a majority of the

members of the trust's governing board, or their contributions constitute greater than 50 percent of the trust's annual receipts, each will be required to file a Form T-1. In making this determination, the Department recognizes that the section 3(l) trust, not the reporting labor organizations, will be the source of most of the necessary information and that this information, in large part, will be identical for each participating labor organization. This will allow for allocation of information collection costs among the labor organizations, as determined by the trust, and will keep all of the reporting labor organization's total costs only marginally higher than if a Form T-1 were required to be filed by only one of the participating labor organizations.

#### *J. Labor Organization's Ability To Obtain Information From Trusts To File the Form T-1*

Under this final rule, a labor organization is required to file a Form T-1 if it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the section 3(l) trust's governing board, or (2) contributes more than 50 percent of the section 3(l) trust's receipts during the annual reporting period.

A number of comments were received expressing concern that it would be difficult for labor organizations to obtain the information necessary to complete the Form T-1 from the section 3(l) trust. One commenter recommended that the Department include a safe harbor provision in the final rule providing that if a labor organization made a demand in writing to the trust for the Form T-1 information and the trust failed to provide the information this would relieve the labor organization of the obligation to file the Form T-1. The Department believes that limiting the Form T-1 reporting requirement to those trusts over which the labor organization has managerial control or financial dominance, as defined in this rule, makes it unlikely that any participating labor organization will have difficulty in obtaining from the trust the information needed to complete the Form T-1. As a result, the Department does not believe a general safe harbor provision is necessary.

However, to address those rare instances where a section 3(l) trust balks at providing the necessary information, which was expressed in many comments, the labor organization may request that the Department use its available investigatory authority to assist the reporting labor organization to obtain information necessary to complete the Form T-1.

The Department expects that labor organizations and labor organization officials will take timely, reasonable, and good faith actions to obtain the necessary information from section 3(l) trusts and, where they have done so, the Department will not assert a willful and knowing violation of the filing requirement against the labor organization, its president, or its treasurer.

Many section 3(l) trusts and labor organizations commented that providing the information required for labor organizations to complete the Form T-1 raised significant concerns regarding a breach of the trust's fiduciary duties owed to participants and beneficiaries, including concerns that individual privacy rights may be violated. With regard to privacy concerns, a pension fund commenter was particularly concerned about the required disclosure of individual benefit recipients by name and address and the subsequent listing of those individuals online. The commenter believed it would be inconsistent with ERISA section 404, 29 U.S.C. 1104, to provide this information to the labor organization so that the labor organization could forward it to the Department for posting on the Internet. A second commenter added concerns that this information could be used for identity theft. As noted above in section D, in this final rule the Department has modified the instructions to the Form T-1 so that itemization is no longer required for benefits disbursements made pursuant to a written agreement specifying the detailed basis for making the payments. The Department believes that this will alleviate the concerns about privacy and identity theft.

A labor organization commenter addressed the potential breach of the trust's fiduciary duties, stating that under ERISA section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), a fiduciary is required to discharge his duties with respect to an ERISA plan solely in the interest of the participants and beneficiaries and "for the exclusive purpose of providing benefits to participants and their beneficiaries; and defraying reasonable expenses of administering the [ERISA] plan." The commenter indicated that having ERISA plans prepare information for labor organizations so that labor organizations can meet their reporting obligations raises concerns as to whether the fiduciary is using ERISA plan assets exclusively for the benefit of participants and whether preparing this information actually would interfere with the normal operations and administration of such ERISA plans.

In addition to the ERISA section 404 concerns, a number of comments also pointed out that ERISA section 406(b), 29 U.S.C. 1106(b), prohibits a fiduciary and a labor organization trustee who is a labor organization official from acting in an ERISA plan transaction, including providing services, involving his or her labor organization. Further, they noted that a labor organization participating in an ERISA trust fund is a party-in-interest to that plan under ERISA. The commenters agreed that ERISA plans may enter into certain transactions with a party-in-interest if the transaction is necessary for the operation or administration of the ERISA plan and does not involve fiduciary self-dealing. However, they believed it unlikely that most ERISA plan fiduciaries would conclude that gathering and furnishing the type of information necessary for a labor organization to complete a Form T-1 would be necessary to operate or administer the ERISA plan. Some commenters suggested that the prohibited transaction issue could be avoided by requiring the labor organization to reimburse the ERISA plan for all expenses connected with the gathering of Form T-1 information but commented that reimbursing the ERISA plan for the Form T-1 expenses would not eliminate the concerns relating to a violation of ERISA section 404.

As a means of resolving these concerns, the Department presents two safeguards. First, in this final rule the Department has included a Form 5500 exemption for those ERISA plans required to file a Form 5500 (Form 5500 T-1 exemption), as discussed in section G(2) above. The Department's inclusion of the Form 5500 T-1 exemption means that most of the commenters who raised concerns about sections 404 and 406 of ERISA will not be required to file a Form T-1, dramatically reducing the number of trusts from which labor organizations will need information. Second, EBSA has reviewed this rule and specifically advises that it would not consider a plan fiduciary to have violated ERISA's fiduciary duty or prohibited transaction provisions by providing officials of a sponsoring labor organization with financial and other information from the plan's books and records as needed to complete the Form T-1, provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials. EBSA explained that the sharing of information in this manner is consistent with ERISA's text and purposes, and a contrary construction is disfavored because it would impede compliance

with the LMRDA and the achievement of its purposes. The Department expects that trusts will routinely and voluntarily comply in providing such information to reporting labor organizations.

#### *K. Scope of LMRDA Section 3(l) in General*

The Department received a few comments that requested a clarification of the scope of section 3(l) of the LMRDA. One commenter requested that the Department clarify that section 3(l) trusts must be limited to "trusts that are established for the primary purpose of providing benefits to members of such labor organization or their beneficiaries (for example, strike funds, credit unions, building funds or trust funds established pursuant to a labor organization's constitution to provide death benefits to members)." This comment suggested that a review of the documents that establish each trust would help to determine whether the trust was established to benefit the members of a labor organization or to benefit the employees. The comment requested that the Department exclude from the coverage of section 3(l) all trusts, even if funded pursuant to a collective bargaining agreement, that in the documents creating the trust, specifically note that the trust is created for the benefit of employees.

Section 3(l) provides that a "trust in which a labor organization is interested" is a trust:

(1) Which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

29 U.S.C. 402(l). The Department agrees that trust documents are critical to making a determination regarding a trust's status as a section 3(l) trust. These documents must be considered along with the actual operation of the trust in determining whether they will give rise to a Form T-1 reporting obligation. Each labor organization must consider the particular circumstances of a trust in evaluating whether the trust satisfies the definition of a section 3(l) trust and then must determine whether the labor organization is required to file a Form T-1 pursuant to this rulemaking. Though the Department is prepared to offer compliance assistance to labor organizations, a thorough review by the Department of all documents that may create a section 3(l) trust is impracticable. Therefore, the Department declines to adopt this suggestion.

With regard to the commenter's implicit conclusion that a trust document stating that the trust is created for the benefit of employees would require the conclusion that the trust would not be a section 3(l) trust, it is the Department's view that such a statement alone would not resolve the question. Section 3(l) requires an inquiry as to whether "a primary purpose \* \* \* is to provide benefits for the members of [a] labor organization or their beneficiaries." Thus, a trust may have more than one primary purpose. The commenter's statement does not provide sufficient information to either determine whether the trust in question is a section 3(l) trust under the LMRDA or whether a trust created by the labor organization for the benefit of employees of an employer would fall outside the scope of section 3(l). Although the Department does not resolve this question, the statement that a trust is created for the benefit of employees by itself would not deny section 3(l) status to the entity in question. Therefore, the Department declines to adopt this suggestion.

A bank submitted comprehensive comments, arguing, in part, that (1) it does not come within the scope of section 3(l) because, in its view, section 3(l) is limited to "health benefits, pension benefits, life-insurance benefits or other similar kinds of concrete and individual benefits, and \* \* \* not to \* \* \* intangible collective benefits," as it characterizes the benefits it provides to the labor organizations creating the bank; and (2) requiring labor organizations to submit a Form T-1 regarding the bank's financial operations would place an unfair burden on the bank relative to its competitors. The bank stated that it believes itself to be "the last union owned commercial bank in the United States," explaining that it was established by a labor organization and that almost 60% of the voting common shares of the bank are owned by a national labor organization subject to the LMRDA. The bank markets itself as "America's Labor Bank" and provides a one percentage point discount on interest rates for loans to union members. It also explained that labor organizations are no longer permitted to own banks, but that its apparently unique status exists by virtue of a grandfather provision in the Bank Holding Act of 1956. See 12 U.S.C. 1843.

The Department is persuaded that the bank's status is indeed unique and, for the reasons that follow, will except labor organizations from submitting a Form T-1 about the bank's financial

operations. The bank, apart from its status as a labor organization-created bank, differs in no material respect from other commercial, for profit banking institutions. Given the nature of its operations, it engages in a much larger number of potentially reportable transactions than all but a few, if any, section 3(l) trusts. Like other financial institutions, it is subject to strict state and federal regulation that tempers somewhat the need for reporting obligations. The bank's commercial lending business is predominantly conducted with non-labor organization entities, a result of the bank's competitive position in the marketplace. Similarly, the majority of the bank's customers are not labor organization members. Credit unions often serve a narrower customer base, which, in the section 3(l) trust context, may consist predominantly of members of the sponsoring labor organization. While the bank does share some characteristics with other section 3(l) trusts, especially credit unions, the bank's customer base is drawn from a broader market, and its investment portfolio is more varied and diverse than a typical credit union. For these reasons the bank's operations are subject to greater market scrutiny than typically would be the case for a labor organization-established credit union. Moreover, as an employer, the bank is subject to the LMRDA's reporting provision for employers, 29 U.S.C. 433, that require it to report any payments to labor organization officials other than those made in the regular course of business. Thus, the bank will be required to disclose on Form LM-10 the kinds of payments that would be of the greatest interest to labor organization members, notwithstanding that labor organizations participating in this trust are excepted from filing the Form T-1 about the bank's financial operations. In connection with this matter, two additional points must be noted. First, the Department is not persuaded by the bank's argument that it does not constitute a section 3(l) trust, however, the Department does not reach this question in excepting labor organizations from reporting on the bank's financial operations. Second, the bank stated in its comments that in addition to its regular banking commercial services, it "also engages in a large institutional trust business providing custody and investment management services to Taft Hartley and other employee benefit plans." By not requiring labor organizations to file a Form T-1 about the bank's financial operations, the Department does not modify in any way the filing obligations

of any labor organizations with section 3(l) trusts that utilize the bank for services in administering such trusts.

*L. Format of the Form T-1, Schedules, and Instructions and Electronic Submission of the Form*

Form T-1, as proposed and adopted by this final rule, is shorter and requires less information than the Form LM-2, the annual financial report filed by labor organizations with at least \$250,000 in annual receipts. It includes: 15 questions on page 1 (Items 1-15) that basically identify the trust; five yes/no questions (Items 16-20) covering issues such as whether any loss or shortage of funds was discovered during the reporting year (Item 16), the disposition of property by other than market sale (Item 17), the liquidation of debts (Item 18), and whether the trust made any loans to officers or employees of the labor organizations at terms below market rates (Item 19); and statements (Items 21-24) regarding the total amount of assets, liabilities, receipts and disbursements of the trust. Item 25 requires additional detail if a filer checks "Yes" to any of the yes/no questions in Items 16 through 20.

The Department proposed that filers submit the Form T-1 electronically to the Department using software provided by the Department and available on the OLMS Web site. As proposed, a Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically within 10 days thereafter. The Department proposed a procedure in the Form T-1 Instructions for applying for a continuing hardship exemption, which was identical to that of the Form LM-2. The proposed procedure whereby forms must be submitted electronically with limited exceptions received no substantive comment and the Department adopts this procedure in this final rule.

The Department received no comments about several specific items on the proposed form, schedules, and instructions. Thus, except as noted below, the final form, schedules, and instructions contain no substantive change from those published in the NPRM. The comments received on particular aspects of the form, schedules, and instructions are identified below. Some of these comments have been addressed in more detail in other sections of the preamble.

In the NPRM, the Department specifically invited comments on whether the trust's employer

identification number (EIN) should be reported on the first page of the Form T-1. The Department stated that the number could be used by members to cross-check the information on the Form T-1 with other reports submitted by the trust, such as its filings with the IRS. As discussed below, the Department has decided to require this information, which will be reported in Item 11. As proposed, Item 11 required filers to report the tax status of the trust; this information need not be reported under the final rule. The Department has concluded that disclosure of the tax status of the trust is of less utility to members than is the EIN and as such is requiring disclosure of the EIN in place of tax status.

Two commenters expressed support for requiring labor organizations to provide the trust's EIN. In their view, this information will "facilitate better cross-referencing between reporting forms" increasing the form's usefulness, and help ensure against fraud or mistake. One commenter opposed including the EIN, arguing that cross-referencing could lead to confusion if users were to compare Form T-1 submissions with reports filed under ERISA by the same trusts.

The Department adopts the requirement that the labor organization must supply the trust's EIN. Item 11 of the form and the corresponding instructions have been modified accordingly. This modification imposes no additional burden on the trust or labor organization beyond what the proposal required, and it does not violate any privacy or confidentiality of the parties, plan participants, or their beneficiaries. Without the disclosure of the EIN on the Form T-1, labor organization members and the public could encounter difficulty finding this information, leaving them unable to easily cross-reference the Form T-1 with other reporting and disclosure forms, thus reducing the form's utility. The Department believes that users will recognize that the Form T-1 and any other reports filed by the trust, such as reports under the Internal Revenue Code (Form 990) do not report identical information. The Department expects that any potential confusion will be minimal and, in any event, is outweighed by the utility of comparing the information reported on the various forms. The ability to cross-reference the Form T-1 with the Form 990 and other disclosure forms, and check for any anomalies, will help reduce the ability of labor organization officials to use a trust to circumvent other LMRDA reporting requirements.

Item 16 of the form requires a labor organization to report the trust's losses, shortages, or other discrepancies in the trust's finances. Three commenters opposed Item 16's requirement of reporting whether the trust discovered a loss or shortage of funds or other property during the reporting period. One expressed concern over reporting delinquent contributions from employers as well as overpayment of benefits, such as payments to ineligible dependants, individuals who have coverage through a spouse, or when the fund does not know of a participant's death. This commenter also argued that reporting a health fund's losses would violate the fund's privacy obligations under HIPAA, as well as require additional work by the fund's staff. Additionally, this comment stated that the definition of "loss" in the instructions is too vague to know what information to send to the labor organization. Finally, a commenter also questioned the lack of an adequate definition of "loss" or "shortage" in the instructions, which may lead to excessive and irrelevant reporting of transactions.

The Department has clarified Item 16, by defining "a loss or shortage of funds or other property." The Department has defined the term to exclude delinquent contributions from employers, delinquent accounts receivable, losses from investment decisions, and overpayments of benefits. Financial transparency enables members to monitor the affairs of their labor organization and its officers, including the operations of a section 3(l) trust that is dominated by the labor organization. While a financial loss or shortage does not, by itself, indicate that the trust is mismanaged or that fraudulent activity is occurring, it provides useful information to members regarding the use of their labor organization's assets and the actions of its officers.

Item 17 of the form requires a labor organization to report the trust's acquisition or disposition of assets. One commenter suggested that it could require tracking "thousands" of such transactions annually, including all write-offs of all fixed assets (with the basis of those assets), all settlements or write-offs of employer contribution obligations (even when de minimis interest obligations are waived or reduced), and would require maintaining every invoice for furniture or equipment until disposed. Although the Department believes that this claim may be overstated, it has clarified the instructions in a way that will largely alleviate any burden. The instructions have been revised to apprise filers that

they may group similar acquired or disposed assets together, in a larger category, as well as grouping multiple assets acquired from or disposed of to the same source, which will reduce the "expansive" nature of this reporting requirement. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

Item 19 of the form requires a labor organization to report loans to labor organizations officers or employees made below market rates. No commenters objected to this provision and it is adopted as proposed.

Items 23 and 24 of the form require a labor organization to report the trust's total receipts and disbursements, respectively. Recognizing that these terms call for reporting on a cash rather than an accrual basis, in contrast to the manner in which some ERISA-regulated trusts prepare their financial statements, one commenter expressed concern that the Department was effectively requiring trusts to establish a second recordkeeping system. The Department is not requiring section 3(l) trusts to establish a cash basis accounting system. As is the case with the Form LM-2, the Department permits filers the choice of how to maintain their recordkeeping system. If section 3(l) trusts for which a labor organization files a Form T-1 choose to prepare their financial statements on an accrual basis, however, labor organizations may need to request access to the trust's books and records in order to obtain the information necessary to report on the Form T-1 the amount of cash and liabilities on hand at the start and close of each reporting period. See 68 FR 58374, 58380-81 (2003) (preamble to Form LM-2 final rule). The Department believes that it is easier for labor organization members to understand the trust's finances if this basic information is provided for their labor organization's section 3(l) trusts. In this regard, the Department notes that most ERISA-regulated trusts will have no Form T-1 reporting obligation where they submit the annual disclosure statements required of them under ERISA.

One commenter sought clarification regarding the reporting of receipts and disbursements where employers submit contributions to related plans on a single check to one trust. The commenter explained that in such instances the trust typically acts as the depository and the contributions are promptly allocated to the other trusts based on each trust's contribution rate. The Department requires Form T-1 to include the total receipts and

disbursements of the trust during its fiscal year. Therefore, Item 23, Receipts, includes all funds received by the trust from any employer or any other source. If a trust acts as a depository and promptly reallocates these receipts to other trusts, then such reallocation must be reported in Item 24 as a disbursement.

#### *M. Effective Date and Reporting Deadlines*

The Department proposed that the final rule would take effect no less than 30 days after its publication in the **Federal Register**. Thus, under the proposal no report would be due until 15 months after the rule's effective date.

Although the Department proposed that the rule could take effect on the 31st day after its publication, this final rule will take effect 90 days after its date of publication and it shall apply only to labor organizations whose fiscal years begin on or after January 1, 2009. The effect of this change is to provide a small amount of additional time over and above that provided under the proposal before the start of the fiscal year for which an initial report will be due. The Department believes that this lead time is sufficient for affected trusts and labor organizations to adapt to the proposed disclosure requirements and make any necessary adjustments to their recordkeeping and reporting systems.

As proposed and as adopted in this final rule, the Form T-1 must be filed within 90 days after the end of the labor organization's fiscal year and must cover the section 3(1) *trust's most recent completed fiscal year, i.e., the fiscal year ending on or before the closing date of the labor organization's own fiscal year*. This requirement is mandated by the LMRDA's requirement that a labor organization file its financial reports within 90 days after the close of the labor organization's fiscal year. 29 U.S.C. 437(b). By permitting a labor organization to file the Form T-1 within 90 days after the labor organization's fiscal year ending date, rather than requiring it to be filed within 90 days after the trust's fiscal year ending date, the Department has eased the reporting burden for both the trust and the labor organization. The instructions to Form T-1 provide examples of when the Form T-1 must be filed.

Many labor organization expressed concern about their ability to file a Form T-1 within 90 days after the end of the labor organization's fiscal year in those instances where the trust and the reporting labor organization had the same fiscal year. The trust community and labor organizations also expressed concern about their ability to timely

provide information and submit the reports, respectively, under those time constraints. Most of the concerns were contingent on the Department's proposal that only a relatively small number of section 3(l) trusts would be excluded from the reporting requirement. Other commenters expressed concern about the ability of multi-employer health and welfare plans to timely provide required information. They stated that insurance carriers and providers, not the trust, have the data needed for the Form T-1, which would complicate and delay the receipt of required information. Others stated that plans that have Medicare D coverage do not receive the Medicare reimbursement for 90 to 120 days from the date a request for reimbursement is filed. Further, some commenters asserted that compiling information for the Form T-1 would interfere with and delay the completion of their duties under other statutes.

The Department has carefully considered the comments, but it retains the view that the rule as proposed provides sufficient time for labor organizations to timely submit reports. The Department's position is based in substantial part on the significant changes to the proposal. As discussed in preceding sections of the preamble, the Department has adopted a reporting exemption that will affect most Taft-Hartley trusts. Where the trust is required to file a Form 5500 under ERISA, labor organizations participating in the trust are not required to file a Form T-1. Additionally, as discussed earlier in this preamble, the Department has established an exception to the itemization requirement for any payments to a trust pursuant to a collective bargaining agreement and any benefits payments made by the trust pursuant to a written agreement specifying the detailed basis on which such payments are made.

As a result of these changes, the number of trusts for which a Form T-1 must be filed has been substantially reduced as has the number of transactions for which itemization is required. Many of the largest trusts with potentially the greatest number of receipts and disbursement to itemize are unaffected by the Form T-1 requirements. Additionally, trusts that were concerned that they would be faced with twice the reporting obligation (Form 5500 and Form T-1) no longer face this dual obligation. A trust that is required to file a Form 5500 will seldom, if ever, be asked by a participating labor organization to

compile information for the submission of a Form T-1.<sup>8</sup>

A number of trusts (those with fiscal years that coincide with the labor organizations' fiscal years) that are *not* required to file a Form 5500 or are eligible for a Form 5500 exemption, are required to generate and deliver financial information to the labor organization(s) in sufficient time for the labor organization to prepare and file the Form T-1 within 90 days after the close of the fiscal year. These trusts will not be faced with the time-consuming task of filing a Form 5500 and will have more resources to devote to providing Form T-1 data. Thus, the filing deadline, even for this small subset of trusts (those not required to file the Form 5500 and that have fiscal years coinciding with the labor organization's), will be reasonable and will not interfere with the trust's compliance with other non-LMRDA statutory and regulatory requirements. Further, the Department notes that the most complex and large labor organizations are required to compile, and have proven themselves capable of compiling, financial data for reporting within 90 days after the close of the fiscal year. The Form T-1 requires less information and information of less complexity than required of a large labor organization in filing the Form LM-2.

## Regulatory Procedures

### *Executive Order 12866*

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data, the rule is not likely to: (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. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Executive Order. However, because of its importance to the public, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

### *Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year, adjusted by the rate of inflation between 1995 and 2008 (\$130.38 million) per 2 U.S.C. 1532(a).

### *Executive Order 13132 (Federalism)*

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule does 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."

### *Analysis of Costs for Paperwork Reduction Act and Regulatory Flexibility Act*

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, Executive Order 13272, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and the PRA's implementing regulations, 5 CFR Part 1320, the Department has undertaken an analysis of the financial burdens to covered labor organizations associated with complying with the requirements contained in this final rule. The focus of the RFA and Executive Order 13272 is to ensure that agencies "review rules to assess and take appropriate account of the potential impact on small businesses, small

governmental jurisdictions, and small organizations, as provided by the [RFA]." Executive Order 13272, Sec. 1. The more specific focus of the PRA is "to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government." 5 CFR 1320.1.

Compliance with the requirements of this rule involve essentially information recordkeeping and information reporting tasks, and the one-time, non-recurring expenses associated with modifying information systems to capture and report the required information. Therefore, the overall impact to covered labor organizations, and in particular, to small labor organizations that are the focus of the RFA, is essentially equivalent to the financial impact to labor organizations assessed for the purposes of the PRA. As a result, the Department's assessment of the compliance costs to covered labor organizations for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. The Department's analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented here first. The conclusions regarding compliance costs in the PRA analysis are then employed to assess the impact on small entities for the purposes of the RFA analysis, which follows.

### *Paperwork Reduction Act*

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501. As discussed in the preamble, this rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping

<sup>8</sup> The Department understands that plans that have Medicare D coverage will not receive the Medicare reimbursement until 90 to 120 days from the date a request for reimbursement is filed. Such trusts typically will not be asked to provide information to labor organizations because such are required to file a Form 5500, eliminating any Form T-1 reporting obligation by the labor organization. However, assuming for purposes of discussion that a trust had to compile information for this purpose, a filer would not have to delay the report for the receipt of the Medicare reimbursement because the Form T-1 requires the reporting of receipts and disbursement on a cash basis. Thus, it need report Medicare reimbursements received as of the close of the fiscal year.

practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is "appropriate to the purpose for which the information is to be collected"; and (9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." 5 CFR 1320.9; *see also* 44 U.S.C. 3506(c).

#### A. Issues Raised in Public Comments Related to the Department's Cost Estimates

As the Department has done with the final rule, the NPRM employed the cost conclusions derived in the PRA analysis in order to assess burdens to small labor organizations for the purposes of the RFA analysis. As a result, for the most part, the comments received by the Department on its costs analysis did not indicate whether they were specifically addressing the PRA analysis, the RFA, or both. Because of the interrelationship between the analyses, and because the RFA specifically requires the Department to address comments related to its burden analysis,<sup>9</sup> the Department has construed all comments received regarding its assessment of costs to the regulated community as comments related to both the PRA and the RFA analysis. Therefore, the introduction to the PRA analysis below is a complete recitation of the significant issues raised by the comments, the Department's response thereto, and changes made to both the PRA and RFA analyses as a result of those comments.

As noted above, the Department received a number of comments related

to its analysis of the financial costs to covered labor organizations associated with compliance with this rule. The vast majority of these comments raised generalized concerns regarding the Department's conclusions relating to costs of compliance. Representative of these generalized comments is one from a representative of approximately 100 jointly sponsored Taft-Hartley trusts asserting that "[t]he costs of compliance [stated in the NPRM] are grossly underestimated. Initially, review of the cost estimates is necessarily difficult due to the lack of sufficient detail regarding the reportable items. \* \* \* The estimates \* \* \* significantly under report the number of hours involved in these complex reporting obligations." In addition to general criticism regarding the Department's cost estimates, many comments on the subject of costs came from trusts asserting that the compliance costs will be borne by trusts rather than labor organizations, the entities with the legal obligation to file the Form T-1. Representative of these comments was a statement from a labor organization-sponsored multiemployer benefit fund, which noted its concern "about the time and effort that would have to be put into preparing the information for the union's T-1 filing. [The trusts] would have to reprogram [their] computer systems, and additional staff time would be required to complete many of the details. The hours of time [the Department] suggest[s] would be needed to perform these tasks [is] significantly underestimate[d]." A small number of cost-related comments challenged the rule based on an assessment of compliance costs as balanced against the benefits of the rule: "Even a cursory review of the reporting requirements imposed by the Proposed Rule indicates that the compliance burden will be significantly greater. The Proposed Rule does not offer Fund participants and beneficiaries any increased value in terms of transparency or available information concerning the Funds beyond that which is already available to participants and beneficiaries."

In response to these general comments, the Department notes that the final cost analysis undertaken in this rule presents a more refined methodology than was performed in the NPRM, as noted in the discussion below, which has significantly improved the Department's estimates of overall costs of compliance with this rule by covered labor organizations. In addition, in response to those comments that assert that the Department failed to account for costs borne by trusts in

which a labor organization has a reporting obligation, the Department has indicated elsewhere in this rule that labor organizations must reimburse trusts for the trust's costs for implementation and maintenance of recordkeeping and for information transmission. Thus, the Department's analysis below expects that while some trusts may perform some of the recordkeeping and other tasks related to reporting required by the rule, those costs will ultimately be borne by labor organizations with the reporting obligations contained in this rule. Finally, in response to those comments that call for a more traditional cost-benefit analysis of this rule, the Department notes that neither the PRA nor the RFA compels such a study.

In addition to the general comments related to cost under-estimation and burdens on trusts, the Department received more specific comments containing alternate estimates suggested for inclusion in the Department's assessment of the costs of compliance. For instance, a number of commenters stated that it would not be uncommon for even a modest-sized local labor organization to have multiple T-1 Forms to file. In addition, comments from trusts and third-party administrators concurred that they would have to reprogram their reporting and recordkeeping systems to compile the necessary information for the Form T-1, and one administrator estimated that it would require approximately 300 hours to compile the necessary information. A national pension fund estimated that its programmers would spend 55 hours reprogramming the current system and staff would spend 120 hours compiling the necessary information. Two commenters estimated that it would cost, on average, anywhere from \$15,000 to \$18,147.81 per filer to comply with the Form T-1 reporting requirements. A third commenter concluded that compliance costs would fall in a range between \$45,000 and \$82,500. Most of the alternate calculations offered by commenters for various data points appeared to be approximations without much, or any, analysis to support the figures.

One comment was much more substantial, however. This commenter challenged the methodology used by the Department to arrive at its conclusions regarding costs, and also offered alternate methodology. The commenter's methodological objections were adopted by reference in several other comments. The commenter's critique identifies four separate but interrelated steps in the Department's analysis of compliance costs in the

<sup>9</sup> The RFA requires that an agency's final regulatory flexibility analysis include "a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments." 5 U.S.C. 604(a)(2).

NPRM, and argues that each step contains methodological errors that result in serious underestimations of costs. According to the commenter, the first step—the identification of tasks needed to complete a Form T-1 and the amount of time each task takes to complete—is flawed because the Department failed to capture in sufficient detail all tasks that the Form LM-2 filer and a trust must complete, failed to specify which person or job classification would complete the identified tasks, and failed to provide a clear methodology for how it arrived at the time values needed to accomplish the identified tasks. In challenging the Department's assumptions as to these data points, the commenter conducted an on-line survey of section 3(l) trusts, which was responded to by 40 multiemployer plans. Among other things, the survey asked whether any information required by Form T-1 was currently tracked by plans, and the approximate number of receipts, disbursements and payments to officers and employees that would be reported. A number of plans indicated that they were not capable of providing the required information on receipts, disbursements, and payments to officers and employees because they could not track the name, address, or purpose of the receipt or disbursement. Of those plans currently capable of reporting the required Form T-1 information, on average they estimated that in the first year it would take 54.5 hours to generate receipt information, 56.0 hours to generate disbursement information, and 26.1 hours to generate the required information on payments to officers and employees, for an overall total of 136.6 hours to compile required reportable information. This figure is almost twice (71.7 hours) the amount of time the Department allocated to costs of reporting and recordkeeping in the first year. See NPRM, 73 FR 11775, Table 3.

The commenter also found flaws with the Department's data in the second part of the cost analysis—estimating the number of Form LM-2 filers that have one or more trusts to report. Regarding this piece of the analysis, the commenter criticized the Department's estimates that 10% of Tier I filers, 25% of Tier II filers, and 100% of Tier III filers would have trusts to report, and instead relied on actual data contained in the Form LM-2 reports in the Department's e.LORS database.<sup>10</sup> Based

<sup>10</sup> As indicated in the NPRM, the Department's analysis segregated labor organizations into three "tiers," based on size of annual receipts. Tier I labor organizations are those with annual receipts between \$250,000 and \$499,999; Tier II labor organizations are those with annual receipts

on data contained in e.LORS databases from the 2006 Form LM-2 reports, the commenter claimed that 2,279 filers indicated that they had at least one reportable section 3(l) trust, whereas the Department's estimates regarding percentages of filers with at least one reportable trust resulted in a number of filers less than half of the commenter's figure.

The third step in the analysis—estimating the average number of Form T-1s that would be filed by Form LM-2 filers indicating an interest in at least one trust—the commenter argued is flawed because the Department makes "undocumented assumptions" about the number of trusts each Form LM-2 filer would need to report. The NPRM assumed that, on average, Tier I filers would need to file reports on one trust, Tier II filers would need to file reports on two trusts, and Tier III filers would file four reports. NPRM, 73 FR 11774. Rejecting those assumptions, the commenter instead randomly selected a subset of 118 Form LM-2 filers of the 2,279 filers he found that indicated an interest in at least one trust based on a search of e.LORS data with 2006 Form LM-2 filing information. Of these 118 randomly selected filers, the commenter calculated that, on average, Tier I filers actually reported an interest in two trusts, Tier II filers actually reported an interest in 3.5 trusts, and Tier III filers actually reported an interest in 5 trusts. Based on this sample, the commenter extrapolates the data to conclude that in 2006, 2,279 Form LM-2 filers had an interest in 7,486 trusts, which is over three times as many Form T-1 trusts as the Department's NPRM estimates. See NPRM, 73 FR 11774, Table 2.

Finally, the commenter asserted that the fourth part of the Department's analysis—estimating the total burden cost—is flawed for several reasons. First, in assigning a value to the hours undertaken to complete the Form T-1 filing, the Department used only hourly wage rates and did not employ total compensation figures, which include costs associated with health insurance, pension contributions and other non-wage compensation and which increase wage rates by 30% generally. Second, the commenter contended that the Department's analysis lacked specificity in stating which employees in which job categories would perform the tasks identified as necessary to file the Form T-1. Third, the commenter stated that the Department's estimates do not consider the costs of equipment or data

between \$500,000 and \$6.5 million; and Tier III labor organizations are those with annual receipts over \$6.5 million.

transfer, or amounts that trusts may charge labor organizations for preparing and supplying information required by the Form T-1. Finally, the commenter argued that the wage rates employed in the NPRM lack credibility, and he asserted that he was unable to confirm them because the Department did not indicate which National Compensation Survey was used in the analysis.<sup>11</sup>

The Department thoroughly analyzed the commenter's critique of the methods used in the NPRM to assess costs associated with compliance with this rule. The commenter's analysis employed several improvements in the methods used by the Department in the NPRM, and the analysis provided the Department with insights about revisions that could be made to the quantitative analysis of compliance costs. However, because of some fundamental flaws in the commenter's analysis, the Department declines to adopt the commenter's methods in whole, and, as a result, declines to adopt the commenter's ultimate conclusions regarding costs of compliance with this rule. For instance, a sample size of 118 Form LM-2 filers is insufficient to make generalizations about a population of 2,279 filers. Nor can a portion of the 118 filers be used to make generalizations about the individual tiers without accepting a very low confidence level. Further, the commenter focused on section 3(l) trusts in general, not trusts for which labor organizations would be required to file the Form T-1. At least some of the listed section 3(l) trusts would not meet the financial dominance or control elements of the Form T-1. At best, the commenter's estimate can be seen as the maximum possible number of Form T-1s required to be filed by the 118 labor organizations studied. Therefore, the Department cannot rely on the commenter's analysis to determine the number of Form T-1s that will be filed each year. Similarly, while the online survey of trusts provides an interesting snapshot of multiemployer plans, no general assumptions can be drawn from 40 self-selected multiemployer plans. This survey, like all self-selecting surveys, is subject to self-selection bias. In this case, it is likely that the participants' decision to participate is correlated with a high number of hours needed to provide the information to complete the Form T-1, making the participants a non-representative sample. Further, no general assumptions

<sup>11</sup> The Department notes that it specifically cited the National Compensation Survey: Occupational Wages in the United States, June 2006 (BLS July 2007, p. 5) in the NPRM. See 73 FR 11776 n.17.

can be made about multiemployer plans or section 3(l) trusts from a sample size of 40 without accepting a very low confidence level. Finally, even if the sample size is accepted the information collected from multiemployer plans cannot be used to make general assumptions about all section 3(l) trusts. Multiemployer plans are one of the most complicated types of section 3(l) trusts. One plan can cover hundreds to thousands of employees working for two or more employers. Therefore, these trusts will have the greatest number of receipts, disbursements, and employees. The Department cannot rely on the commenter's analysis to calculate the estimated burden.

Based upon careful consideration of the commenter's cost estimates and the methods employed to arrive at cost estimates, the Department has made adjustments to its quantitative methods and therefore to its burden estimates. As reflected in the analysis that follows, the Department has, among other things:

- Relied on data reported from Form LM-2 filers in 2006 contained in the Department's e.LORS database to estimate more accurately the number of Form T-1s that a covered labor organization may file;
- Analyzed a randomly selected, statistically reliable sample of the 2,292 Form LM-2 filers in 2006 that indicated an interest in at least one trust in order to better estimate the number of trusts about which a labor organization may need to file Form T-1s;
- Disaggregated the tasks associated with completing the Form T-1 in a more detailed fashion so that the number of hours estimated as necessary to prepare the Form T-1 is more accurate; and
- Employed a total compensation figure to estimate the costs to a labor organization in preparation of the Form T-1.<sup>12</sup>

As a result of these improvements to the Department's methodological approach, the estimates of costs to labor organizations for compliance with this rule have been revised upward.<sup>13</sup> Those

<sup>12</sup> The NPRM indicated that the Department's initial PRA analysis employed wage rate data adjusted to reflect total compensation. 73 FR 11776. The use of total compensation figures is more apparent in this final cost analysis because, as noted in the discussion that follows, wage figures are adjusted upward by a factor of 30% to account for total compensation, and that upward adjustment is specifically shown in Table 4 below.

<sup>13</sup> This upward revision occurred despite the fact that this final rule reinstated the exemption for section 3(l) trusts that are required to file a Form 5500 under ERISA. That exemption realized a reduction in overall compliance costs for covered labor organizations, but the methodological improvements in the cost analysis offset those savings.

figures are reported in the analyses that follow.

Pursuant to the PRA, the information collection requirements contained in this final rule were submitted to OMB and received approval on September 29, 2008 under OMB control number (1215-0188). The approval will expire on September 30, 2011. The Form T-1 and its instructions, which are modified to reflect the new filing criteria, are published as an appendix to this final rule.

#### B. Summary of the Rule: Need and Economic Impact

This final rule implements the Form T-1 Trust Annual Report required to be filed by the largest labor organizations for trusts in which they are interested, under conditions prescribed by the Secretary of Labor. See 29 U.S.C. 402(l); 431(b); 438.

As discussed in the preamble, members have long been denied important information about labor organization funds that were being directed to other entities, presumably for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. The Form T-1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members whose work obtained the payments to the trust. It is also necessary to prevent circumvention and evasion of the reporting requirements imposed on officers and employees of labor organizations and on employers.

The form is designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents of the reports. Labor organization members thus will be able to obtain a more accurate and complete picture of their labor organization's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain,

assemble, and produce such documentation in the event of an inquiry from a labor organization member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to OMB. Based upon careful consideration of comments received regarding the Department's estimate of costs in the NPRM, the Department made methodological revisions which resulted in adjustments to its burden estimates in this final rule. The costs to the Department also were adjusted. Federal annualized costs are discussed after the burden on the reporting labor organizations is considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with Form T-1 will be 423,913.74 hours for all covered labor organizations. The total first year compliance costs associated with this burden is estimated to be \$15.19 million for all covered labor organizations. Both the burden hours and the compliance costs associated with Form T-1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years for all covered labor organizations to comply with the Form T-1 to be 345,736.92 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be \$10.51 million for all covered labor organizations.<sup>14</sup>

#### C. Overview of Form T-1

The Form T-1 in this rule is identical to the form promulgated at 73 FR 11779, with the exception of the addition of an item requiring the reporting of the trust's EIN and the deletion of an item requiring the listing of the trust's tax status. However, as discussed in the preamble, the scope of the reporting requirement has been narrowed in order to conform to the rule with the DC Circuit's decision in *AFL-CIO v. Chao*, 409 F.3d 377 (2005). This final rule provides that no Form T-1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or is required to file a Form 5500 pursuant to the requirements of ERISA (if the trust can elect to exempt itself from filing a Form

<sup>14</sup> The compliance costs for all covered labor organizations for the first year, and the compliance costs averaged over the first three years—\$15.19 million and \$10.51 million, respectively—are well below the \$100,000,000 threshold that would make this rule economically significant under Executive Order 12866. Therefore, as noted earlier, the Department has determined that this rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866.

5500 then it must file a Form T-1 regardless of whether it takes the exemption or not), or if the organization files publicly available reports with a Federal or state agency as a PAC. Additionally, a labor organization may substitute an audit that meets the criteria set forth in the Form T-1 Instructions for the financial information otherwise reported on a Form T-1.

Form T-1 consists of 15 questions on page 1 that generally identify the labor organization and trust; five yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations at terms below market rates; four summary numbers for total assets, liabilities, receipts, and disbursements; a schedule for itemizing all receipts of \$10,000 or more, individually or in the aggregate, from any entity or individual; a schedule for itemizing all disbursements of \$10,000 or more, individually or in the aggregate, to any entity or individual; and a schedule for listing all officers of the trust and payments to them and all employees of the trust who received more than \$10,000 from the trust.<sup>15</sup>

Form T-1 and its instructions, which are modified to reflect the changes made to the proposal, are published as an appendix to this final rule. A more complete discussion of the form is set forth at section II.L. of the preamble.

#### D. Methodology for the Burden Estimates

As an initial matter, it should be noted, as was noted in the NPRM, that some of the numbers included in both this PRA analysis and the preceding regulatory flexibility analysis will not add perfectly due to rounding.

##### 1. Number of Form T-1s Filed

The Department started by determining the population affected by the Form T-1. Form LM-2 Item 10 asks the reporting labor organization to indicate whether it created or participated in the administration of a trust or other fund or organization, as defined in the Form LM-2 instructions, which provides benefits for members or their beneficiaries. If the labor organization indicates that it did have one or more section 3(l) trusts, it must list the trusts, including name, address, and details about the trust, in Form LM-2 Item 69. The Department determined

that 2,292 Form LM-2 filers indicated on their 2006 report that they had at least one section 3(l) trust.

In order to improve the estimates concerning the number of trusts about which covered labor organizations would be required to provide T-1 reports, the Department sampled a randomly selected subset of the 2,292 Form LM-2 2006 filers that indicated an interest in at least one trust. The Department first calculated the appropriate sample size. Consistent with commonly accepted statistical practices, the Department determined that a level of precision or sample error of 6%, a confidence interval of 90%, and a degree of variability of 50% (maximum variability) was acceptable for the Form T-1 final burden analysis. The Department concluded that it needed to examine Item 69 on the reports of 174 of the 2,292 labor organizations to determine the average number of section 3(l) trusts per Form LM-2 filers that answered Item 10 "Yes," indicating that it had at least one section 3(l) trust. The sample size of 174 LM filers was then increased by 20% to 210, in order to ensure an appropriate sample size was maintained throughout the analysis.

To improve estimates of means, the Department used a proportionate stratified sample, which ensured that neither large nor small labor organizations were overrepresented in the sample and permitted the final cost figures to be reported without regard to "tier" or size, as was done with the NPRM. The population was arranged into three strata based on annual receipts:

- Strata I (\$250,000-\$499,999 receipts): 380 Form LM-2 filers with section 3(l) trusts
  - Strata II (\$500,000-\$49.9 mil receipts): 1,863 Form LM-2 filers with section 3(l) trusts
  - Strata III (\$50 mil and higher receipts): 49 Form LM-2 filers with section 3(l) trusts
- The proportion of each strata to the population was then determined:
- Strata I (\$250,000-\$499,999 receipts): 16.58%
  - Strata II (\$500,000-\$49.9 mil receipts): 81.28%
  - Strata III (\$50 mil and higher receipts): 2.14%

Finally, the sample size from each strata was drawn proportionately to its representation in the population:

- Strata I (\$250,000-\$499,999 receipts):  $210 \times 16.58\% = 35$
- Strata II (\$500,000-\$49.9 mil receipts):  $210 \times 81.28\% = 171$
- Strata III (\$50 mil and higher receipts):  $210 \times 2.14\% = 4$

Each labor organization that answered Form LM-2 Item 10 affirmatively was assigned a random number. A random number generator was then used to select 35 labor organizations from strata I, 171 labor organizations from strata II, and 4 labor organizations from strata III. After a careful analysis of the Form LM-2 of each of those labor organizations, the Department determined that of the 210 labor organizations studied, five labor organizations (all from strata II) were non-responsive, i.e., either they did not list any trusts in Item 69 or the information provided in Item 69 did not accurately indicate the number of section 3(l) trusts. These five labor organizations were removed from the sample and the burden analysis proceeded based on the remaining 205 labor organizations.

Information on each trust listed in Item 69 in the sampled Form LM-2s, including name, address, EIN, and other information, was entered on a worksheet. The final worksheet listed 663 trusts, including welfare benefit plans, building trusts, strike funds, and pension plans. The information was uploaded and compared to the EBSA database to determine which of these 663 section 3(l) trusts filed a Form 5500 in either 2004 or 2005. It was determined that 383 or 57.77% filed a Form 5500 in either 2004 or 2005. A Form T-1 will not have to be filed for these entities because of the reinstated Form 5500 exemption. Therefore, the 383 trusts that filed Form 5500 were removed from the sample.

It should be noted that inconsistencies in the information reported in Item 69 in the sampled Form LM-2s made it difficult in some instances to determine whether a Form 5500 was filed by the trust. Many of the labor organizations did not include the trust's EIN number. Others did not provide the necessary detail, including incomplete or incorrect names, to determine whether or not a Form 5500 was filed by the trust. The Department surmises that at least some of the remaining 280 trusts filed a Form 5500 in 2006, but cannot calculate the magnitude of the overlap because of insufficient information on the Form LM-2s reviewed. Further, the Department cannot determine which of the section 3(l) trusts meet the financial dominance or managerial control test based on the limited information in the Form LM-2s. Therefore, a Form T-1 will not have to be filed for at least some of the remaining 280 section 3(l) trusts because they do not meet either of the above tests. As a result, the Form T-1 filing estimate calculated in this study

<sup>15</sup> The NPRM contained an inadvertent error stating that page 1 of the Form T-1 contained 14 questions and 6 yes/no questions. 73 FR 11773. These errors have been corrected here.

should be seen as a high estimate, if not a maximum.

The Department assumed that the 205 sampled labor organizations will be required to file a Form T-1 for the remaining 280 trusts. Therefore, based on the 2006 data, each labor organization that indicated it had a section 3(l) trust will file, on average, 1.37 Form T-1s each year after the implementation of this rule:

$$\frac{280 \text{ (number of trusts reported by sampled labor organizations)}}{205 \text{ (number of labor organizations in sample)}} = 1.37 \text{ average number of Form T-1s filed each year by all labor organizations}$$

which, based on extrapolation of the 2006 data, results in the expectation that a total of 3,130.54 Form T-1s will be filed yearly by all labor organizations:

$$1.37 \text{ (average number of Form T-1s filed each year per labor organization)} \times 2,292 \text{ reporting labor organizations} = 3,130.54 \text{ yearly Form T-1s.}$$

## 2. Hours To Complete and File Form T-1: Recurring and Nonrecurring Reporting and Recordkeeping

The Department estimated burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours associated with the final rule.<sup>16</sup>

### a. Hours To Complete Page 1

The Department estimates that, on average, labor organizations will expend 1.83 reporting hours each year completing page 1 of the Form T-1, which is broken out as follows. To complete the first page of the Form T-1 the labor organization will have to train new staff on the reporting software, enter trust information, answer Items 9, 14, and 15, provide additional information (if necessary), and sign the report. Items 1, 2, and 4-8 will be automatically filled by the reporting software when the Form T-1 is downloaded. The remaining information provided on the first page of the Form T-1 is very similar to the information provided on the first page of the Form LM-3 (10 items that identify the labor organization and one yes/no question addressing whether or

not the organization's records are kept at its mailing address). Experience with the Form LM-3 has indicated that Form LM-3 filers expend approximately 15 minutes each year training new staff on how to fill out the first page of the Form LM-3. Additionally, Form LM-3 filers spend approximately 5 minutes on each item on the Form LM-3. Therefore, the Department has determined that Form T-1 filers will spend 50 minutes filling out the trust information and 15 minutes answering the 3 yes/no questions on page 1. If additional information is required, the Department has determined that the labor organization should be able to fill out the address(es) where the records of the trust and labor organization are maintained in 10 minutes. Finally, the labor organization president and treasurer will be able to sign the Form T-1 in 20 minutes once they have reviewed the report. The president and treasurer will already have the electronic signature software available for signing the Form LM-2, so in most cases it will be a matter of a click on the signature field on Form T-1 to apply the signature.

There is no recordkeeping burden associated with the first page of the Form T-1, because the labor organization should already keep records on the labor organization and trusts in which it is interested to complete the Form LM-2, including the trust's name, address, purpose, and EIN. Further, neither the trust nor the labor organization will have to make any changes to their accounting systems to report the information required on page 1 of the Form T-1.

### b. Hours To Complete Page 2

The Department estimates that, on average, labor organizations will expend 1.33 reporting hours each year completing page 2 of the Form T-1, broken out as follows. The labor organization will have to train new staff, answer five questions, enter the total assets, liabilities, receipts, and disbursements, and enter additional information as necessary. Like the first page of the Form T-1, the second page is relatively straightforward. The Department has determined that it will take, on average, 15 minutes for labor organizations to train staff to complete the second page of the Form T-1. The majority of the reporting burden is attributable to Items 16 through 20. Although rare, the types of losses and transactions captured by Items 16 through 20 are of significant importance to both labor organizations and trusts. Each of these losses or transactions should be tracked closely by the trust to

ensure that the trust is properly managed and free from preferential insider transactions. Therefore, the trust should be able to easily identify and provide details on any loss or transaction that falls within Items 16 through 20. The Department has determined that the trust can provide the labor organization with answers to Items 16 through 20 in 25 minutes, 5 minutes per question. Further, the Department has determined that the labor organization will spend approximately 30 minutes entering the required details in Item 25 for the items that are answered affirmatively. Due to the rare nature of these transactions, the Department estimates that, on average, trusts will have one transaction that must be described in Item 25. Finally, the Department has determined that it will take 10 minutes to find and enter the total receipts, disbursements, assets, and liabilities in Items 21, 22, 23, and 24.

There is no recordkeeping burden associated with the second page of the Form T-1. The answers to Items 16 through 20 are tracked by the trust along with receipts and disbursements. Therefore, the recordkeeping burden associated with Items 16 through 20 has been included in the recordkeeping burden for the receipts and disbursements schedules. Further, there is no recordkeeping burden associated with Items 21 through 24. Information provided in Items 21, total assets, and 22, total liabilities, are kept in the normal course of the trust's recordkeeping. Items 23, total receipts, and 24, total disbursements, are easily accessible from records maintained by the trust in the regular course of business. There is no recordkeeping burden associated with Items 23 and 24 as information about receipts and disbursements is already required for their individual schedules.

### c. Hours To Revise Information Systems and Train Personnel To Collect Required Information

Working from information provided by the trusts labor organizations will be able to utilize information systems and personnel now used by labor organizations in fulfilling their Form LM-2 obligations. In 2003, Form LM-2 filers had to change their accounting systems to capture information very similar to the information reported on the Form T-1. Experience with the Form LM-2 indicates that, on average, Form T-1 respondents will expend 5.50 hours on each schedule or 16.51 total hours changing their accounting systems in the first year (non-recurring recordkeeping burden) and 4.25 hours

<sup>16</sup> As discussed previously, some labor organizations may request section 3(l) trusts to provide information needed by labor organizations to comply with their Form T-1 reporting obligations. A labor organization must pay for any expenses incurred by the trust in providing information to the labor organization or in assisting with other tasks associated with the Form T-1 requirements.

on each schedule preparing the systems to report the information (non-recurring reporting burden), including developing, testing, and reviewing revisions to the accounting software; preparing the download methodology (converting data into a format for submission to the Department); and training personnel on each of the schedules.

**d. Hours To Complete Receipts, Disbursements, and Officers and Employees Schedules**

The reinstatement of the Form 5500 exemption has significantly reduced the variability of types of section 3(l) trusts for which the Form T-1 will need to be filed. A careful analysis of the non-exempt trusts, used in the analysis above, indicates that many if not most of the Form T-1s will be filed for building trusts, strike funds, and apprenticeship and training funds. Unlike pension and health plans, these trusts, on average, will have few disbursements, receipts, officers, and employees. For example, strike funds are likely to have no disbursements unless the labor organization is striking. Further, many of these trusts, including building trusts, are closely associated with the labor organization and function in a similar fashion. Therefore, the Department has estimated the number of disbursements, receipts, officers, and employees listed on the Form T-1 based on the 2006 Form LM-2 data.

The Department estimates that, on average, Form T-1 filers will expend 5.43 hours a year on recordkeeping to document the information necessary to complete the Form T-1 receipts schedule. Based on the sample outlined above, Form LM-2 filers, on average, itemize 11 receipts on Schedule 14 (other receipts). The remaining receipts are reported as aggregates in 12 separate categories: dues, per capita tax, fees, sales of supplies, interest, dividends, rents, sales of investment and fixed assets, loans, repayment of loans, receipts held on behalf of affiliates for transmission to them, and receipts from members for disbursement on their behalf. The average number of itemized receipts listed on Form LM-2 Schedule 14, 11 itemized receipts, was multiplied by 10 to capture all itemized receipts on the Form T-1. The Department did not

increase the number of itemized receipts by 13 because it does not believe trusts will have receipts from per capita taxes nor will they hold money for members and affiliates. Therefore, on average, trusts will itemize 109.86 receipts each year. Experience with the Form LM-2 indicates that a labor organization can input all the necessary information on an itemized receipt in 3 minutes. The total number of itemized receipts, 109.86, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 5.43 hours.

For the Form T-1 disbursement schedule the Department estimates that, on average, filers will expend 54.13 hours a year on recordkeeping. The Department estimated the number of itemized disbursements on the Form T-1 by looking at the Form LM-2 filers in the original sample. The sample indicated that the average Form LM-2 has 1,083 itemized disbursements. Like receipts, the Department estimates it will take 3 minutes to input all the necessary information on an itemized disbursement. The total number of itemized disbursements, 1,083, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 54.13 hours. Like labor organizations, trusts are primarily established to provide benefits to members and beneficiaries. Therefore, it is not surprising that the number of disbursements greatly exceeds the number of receipts.

The Department estimates Form T-1 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete the officers and employees schedule (Schedule 3). The trust will not have to increase recordkeeping for officers and key employees. Trusts are already required to keep records on its officers and key employees for the IRS Form 990, including name, address, current position, salary, fees, bonuses, severance payments, deferred compensation, allowances, and taxable and nontaxable fringe benefits. The filers will have to begin keeping records on non-key employees. Based on the Form LM-2 sample, the Department determined that Form LM-2 filers have, on average, 21.57 employees. Trusts, as employers, keep wage records for each of their employees. However, it is likely

that the trusts will not keep records on each employee's allowances, expenses for official business, and other disbursements attributed to the employee. The Form LM-2 sample indicated that most employees did not receive anything in allowances, disbursements for official business, or other disbursements. Those that did receive allowances, 33.30%, received, on average, \$6,496.80. Those that did receive disbursements for official business, 71.89%, received, on average, \$10,308.49. Finally, those that did receive disbursements other than those individually itemized, 5.17%, received, on average, \$2,818.05. The Department determined that the trust would expend 3 minutes on each \$10,000 disbursement to employees. The number of employees, 21.57, was multiplied by the average number of disbursements and the proportion of employees that listed each of the disbursements for a total of 10.07 recordkeeping hours.

**e. Hours for Data Input**

Finally, the Department estimated that Form T-1 filers will spend 3.75 hours on each schedule inputting the data. Inputting the information into the Form T-1 is very similar to inputting data into the Form LM-2. Experience with the Form LM-2 in previous rule makings indicates that labor organizations will spend 15 minutes a year training new staff, 60 minutes preparing the download, 90 minutes preparing and testing the data file, and 60 minutes editing, validating and importing the data.

**f. Total Hours Spent on Recordkeeping and Reporting**

As discussed above, and as reflected in the following tables, the Department estimates that, on average, labor organizations will expend 94.21 hours per Form T-1 filed on recordkeeping the first year and 69.70 hours per Form T-1 filed on recordkeeping each subsequent year on each Form T-1 filed. Additionally, on average, labor organizations will expend 41.20 hours per Form T-1 filed on reporting the first year and 28.28 hours per Form T-1 filed on reporting each subsequent year on each Form T-1 filed.

TABLE 1—NON-RECURRING BURDEN IN MINUTES PER FORM T-1 FILED

| Schedule  | Schedule or item description                          | Non-recurring burden per form T-1 filed |                        |               |               |            |              |                            | Total non-recurring burden |
|---|---|---|------------------------|---------------|---------------|------------|--------------|----------------------------|----------------------------|
|   |   | Record-keeping burden                   | Reporting burden       |               |               |            |              |                            |                            |
|   |   |   | Change acct. structure | Design report | Develop query | Test query | Mgmt. review | Document the query process |                            |
| Page 1 .....  | General Trust Identifying Information .....           | 0                                       | 0                      | 0             | 0             | 0          | 0            | 0                          | 0                          |
| Page 2 .....  | Items 16 through 24 .....                             | 0                                       | 0                      | 0             | 0             | 0          | 0            | 0                          | 0                          |
| 1 .....   | Individually Identified Receipts .....                | 330.27                                  | 60                     | 60            | 45            | 30         | 45           | 15                         | 585.27                     |
| 2 .....   | Individually Identified Disbursements .....           | 330.27                                  | 60                     | 60            | 45            | 30         | 45           | 15                         | 585.27                     |
| 3 .....   | Disbursements to Officers and Employees of the Trust. | 330.27                                  | 60                     | 60            | 45            | 30         | 45           | 15                         | 585.27                     |
| Total Non-Recurring Burden per Form T-1 Filed .....       |   | 990.82                                  | 180                    | 180           | 135           | 90         | 135          | 45                         | 1,755.82                   |
| Total Non-Recurring Burden Hours per Form T-1 Filed ..... |   | 16.51                                   | 3.00                   | 3.00          | 2.25          | 1.50       | 2.25         | 0.75                       | 29.26                      |

TABLE 2—RECURRING RECORDKEEPING BURDEN IN MINUTES PER FORM T-1 FILED

| Schedule  | Schedule or item description                               | Recurring record-keeping burden per Form T-1 filed |
|---|--|--|
| Page 1 .....  | General Trust Identifying Information .....                | 0  |
| Page 2 .....  | Items 16 through 24 .....                                  | 0  |
| 1 .....   | Individually Identified Receipts .....                     | 329.57   |
| 2 .....   | Individually Identified Disbursements .....                | 3,247.93   |
| 3 .....   | Disbursements to Officers and Employees of the Trust ..... | 604.4285714  |
| Total Recurring Burden per Form T-1 Filed .....       |  | 4,181.93   |
| Total Recurring Burden Hours per Form T-1 Filed ..... |  | 69.70  |

TABLE 3—RECURRING REPORTING BURDEN IN MINUTES PER FORM T-1 FILED

| Schedule  | Schedule or item description                          | Recurring reporting burden per form T-1 filed |                  |                               |                                |   |                  |  |                        | Total recurring reporting burden |           |
|---|---|---|------------------|-------------------------------|--------------------------------|---|------------------|--|------------------------|----------------------------------|-----------|
|   |   | Train new staff                               | Prepare download | Preparation of test/data file | Edit/validate/import data file | Fill out trust/labor organization information | Answer questions | Fill in assets, liabilities, disbursements, and receipts | Additional information |                                  | Signature |
| Page 1 .....  | General Trust Identifying Information .....           | 15  | 0                | 0                             | 0                              | 50  | 15               | 0  | 10                     | 20                               | 110       |
| Page 2 .....  | Items 16 through 24 .....                             | 15  | 0                | 0                             | 0                              | 0   | 25               | 10   | 30                     | 0                                | 80        |
| 1 .....   | Individually Identified Receipts .....                | 15  | 60               | 90                            | 60                             | 0   | 0                | 0  | 0                      | 0                                | 225       |
| 2 .....   | Individually Identified Disbursements .....           | 15  | 60               | 90                            | 60                             | 0   | 0                | 0  | 0                      | 0                                | 225       |
| 3 .....   | Disbursements to Officers and Employees of the Trust. | 15  | 60               | 90                            | 60                             | 0   | 0                | 0  | 0                      | 0                                | 225       |
| Total Recurring Burden per Form T-1 Filed .....       |   | 75  | 180              | 270                           | 180                            | 50  | 40               | 10   | 40                     | 20                               | 865       |
| Total Recurring Burden Hours per Form T-1 Filed ..... |   | 1.25  | 3.00             | 4.50                          | 3.00                           | 0.83  | 0.67             | 0.17   | 0.67                   | 0.33                             | 14.42     |

3. Cost of Personnel To Complete and File Form T-1

The Department assumes that, on average, the completion by a labor organization of Form T-1 will involve an accountant/auditor, computer software engineer, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2007 BLS wage data, accountants earn \$30.37 per hour, computer engineers earn \$41.18 per hour, and bookkeepers/

clerks earn \$15.76 per hour.<sup>17</sup> BLS has estimated that the total compensation cost is approximately 30.2% higher than wages. Therefore, the Department adjusted each of the BLS salaries to include the additional 30.2% attributed to benefits to estimate the total compensation cost for each of the individuals involved in completing the Form T-1.

<sup>17</sup> The wage and salary data is based on information contained in Bureau of Labor Statistics, Occupational Employment Statistics Survey, 2007.

The Department estimated the average annual salaries of labor organization officers needed to complete tasks for compliance with this rule—the president and treasurer—from responses to salary inquiries contained in the sample of 205 labor organizations that filed a Form LM-2 in 2006 and indicated an interest in at least one section 3(l) trust, as discussed above. See, supra, section D.1. These average annual salary figures were then adjusted to include the additional 30.2% attributed to benefits to reflect total

compensation cost for each officer, which the Department calculated as \$35.66 per hour for labor organization

president and \$45.24 per hour for labor organization treasurer.<sup>18</sup>

TABLE 4—COMPENSATION COST TABLE

| Title   | Salary: hourly | Salary: yearly | Compensation cost: hourly |
|---|----------------|----------------|---------------------------|
| Accountants/Auditors .....                      | \$30.37        | \$63,180.00    | \$43.51                   |
| Computer software engineers, applications ..... | 41.18          | 85,660.00      | 59.00                     |
| Bookkeepers/Clerks .....                        | 15.76          | 32,780.00      | 22.58                     |
| President .....                                 | 24.89          | 51,770.35      | 35.66                     |
| Treasurer .....                                 | 31.58          | 65,680.48      | 45.24                     |

Once the compensation costs were calculated, the Department applied those costs to each of the Form T-1 tasks computed in the previous section. Each task was evaluated separately to determine which individual from a particular job category would be needed to complete the task. For instance, as indicated above, the Department determined that trusts will expend 16.51 hours changing their accounting structure. As part of that total, an accountant will spend approximately

3.3 hours of the total 16.51 hours, or 20 percent of the time allotted for this task, updating and changing the accounting structure. The remaining 12.21 burden hours, 80 percent of the total time allotted for this task, will be completed by a computer software engineer. The computer software engineer will have to write the program to track and accept accounting entries specific to the reporting requirements of the Form T-1, *i.e.*, itemization of all receipts and disbursements over \$10,000 including

name, address, and purpose of receipt or disbursement.

As demonstrated by this example, all tasks identified by the Department above as necessary for compliance with the requirements of this rule were analyzed to determine which personnel would conduct those tasks. The following table presents this analysis of which personnel are needed to perform each task, and the hours that such personnel will spend completing each task.

TABLE 5—COST BY TASK

| Burden type                    | Task   | Individual(s) participating                             | Hourly cost | Hours to complete | Total cost |
|--------------------------------|--|---|-------------|-------------------|------------|
| Non-Recurring Recordkeeping .. | Install/Setup Hardware .....                   | Computer Software Engineer ...                          | \$59.00     | 8.00              | \$471.98   |
| Non-Recurring Recordkeeping .. | Change Acct. Structure .....                   | Computer Software Engineer and Accountant.              | 55.90       | 16.51             | 923.11     |
| Non-Recurring Reporting .....  | Obtain Trust Number .....                      | Bookkeeper .....  | 22.58       | 0.17              | 3.76       |
| Non-Recurring Reporting .....  | Design Report .....                            | Computer Software Engineer and Accountant.              | 51.25       | 3.00              | 153.76     |
| Non-Recurring Reporting .....  | Develop Query .....                            | Computer Software Engineer and Accountant.              | 55.90       | 3.00              | 167.70     |
| Non-Recurring Reporting .....  | Test Query .....                               | Computer Software Engineer, Bookkeeper, and Accountant. | 54.08       | 2.25              | 121.68     |
| Non-Recurring Reporting .....  | Mgmt. Review .....                             | Treasurer .....   | 45.24       | 1.50              | 67.86      |
| Non-Recurring Reporting .....  | Document the Query Process ..                  | Bookkeeper .....  | 22.58       | 2.25              | 50.80      |
| Non-Recurring Reporting .....  | Train Staff .....                              | Computer Software Engineer, Bookkeeper, and Accountant. | 41.70       | 0.75              | 31.27      |
| Recurring Recordkeeping .....  | Input Records .....                            | Bookkeeper .....  | 22.58       | 69.70             | 1,573.72   |
| Recurring Reporting .....      | Train New Staff .....                          | Computer Software Engineer, Bookkeeper, and Accountant. | 41.70       | 1.25              | 52.12      |
| Recurring Reporting .....      | Information on Form T-1 Provided to Trust.     | Accountant .....  | 43.51       | 2.40              | 104.42     |
| Recurring Reporting .....      | Review Form T-1 and Instructions.              | Computer Software Engineer and Accountant.              | 51.25       | 4.30              | 220.39     |
| Recurring Reporting .....      | Review by Trust .....                          | Accountant .....  | 43.51       | 2.00              | 87.02      |
| Recurring Reporting .....      | Form/Information Sent to Labor Organization.   | Bookkeeper .....  | 22.58       | 1.00              | 22.58      |
| Recurring Reporting .....      | Obtain Pre-Filled Form T-1 .....               | Bookkeeper .....  | 22.58       | 0.17              | 3.76       |
| Recurring Reporting .....      | Prepare Download .....                         | Bookkeeper .....  | 22.58       | 3.00              | 67.74      |
| Recurring Reporting .....      | Preparation of Test/Data File ...              | Accountant and Bookkeeper ...                           | 26.77       | 4.50              | 120.44     |
| Recurring Reporting .....      | Edit/Validate/Import Data File ...             | Accountant and Bookkeeper ...                           | 26.77       | 3.00              | 80.30      |
| Recurring Reporting .....      | Fill Out Trust/Labor Organization Information. | Accountant .....  | 43.51       | 0.83              | 36.26      |
| Recurring Reporting .....      | Answer Questions .....                         | Accountant .....  | 43.51       | 0.67              | 29.01      |
| Recurring Reporting .....      | Fill In Assets and Liabilities .....           | Accountant .....  | 43.51       | 0.17              | 7.25       |
| Recurring Reporting .....      | Fill Additional Information .....              | Accountant .....  | 43.51       | 0.67              | 29.01      |
| Recurring Reporting .....      | Management Review .....                        | President and Treasurer .....                           | 40.45       | 4.00              | 161.80     |

<sup>18</sup>The study determined that labor organization presidents make \$24.89 an hour. The Department knows that 69.8% of compensation cost is attributed to salary and 30.2% of compensation cost

is attributed to benefits. Salary = 69.8% (Compensation Cost) or Compensation Cost = Salary/69.8%. If we apply the preceding equation to the president's salary we come up with a

compensation cost of \$35.66 (35.66 = 24.89/.698). The same equation was used to calculate compensation cost for accountants, computer software engineers, bookkeepers, and treasurers.

TABLE 5—COST BY TASK—Continued

| Burden type  | Task            | Individual(s) participating   | Hourly cost | Hours to complete | Total cost |
|--|-----------------|-------------------------------|-------------|-------------------|------------|
| Recurring Reporting .....                                | Signature ..... | President and Treasurer ..... | 40.45       | 0.33              | 13.48      |
| Total Non-Recurring Recordkeeping and Reporting .....    |                 |                               |             | 37.43             | 1,991.92   |
| Total Recurring Recordkeeping and Reporting Burden ..... |                 |                               |             | 97.98             | 2,609.29   |

4. Calculation of Total Costs to Labor Organizations Filing a Form T-1

Based on the analysis reflected in the table above, the average cost per Form T-1 filed is estimated at \$4,851.20 in the first year and \$2,609.29 in each subsequent year. The total cost for all

Form T-1s filed is estimated at \$15,186,874.46 in the first year and \$8,168,474.74 in each subsequent year. The Department believes that most of the section 3(l) trusts covered by the Form T-1 will have the necessary hardware to compile the information required by the Form T-1 and provide

it to the labor organization(s). However, some of the smallest plans might choose to upgrade their systems. Therefore, the Department has included in these final figures a one-time cost of \$250 in the burden analysis to account for any hardware or software purchases. These results are reflected in the table below.

TABLE 6—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR T-1

| Form                     | Number of form T-1s filed | Reporting hours per form T-1 filed | Total reporting hours | Record-keeping hours per form T-1 | Total recordkeeping hours | Total burden hours per form T-1 filed | Total burden hours | Average cost per form T-1 filed | Total cost      |
|--------------------------|---------------------------|------------------------------------|-----------------------|-----------------------------------|---------------------------|---------------------------------------|--------------------|---------------------------------|-----------------|
| Form T-1:                |                           |                                    |                       |                                   |                           |                                       |                    |                                 |                 |
| First Year .....         | 3,130.54                  | 41.20                              | 128,978.11            | 94.21                             | 294,935.64                | 135.41                                | 423,913.74         | \$4,851.20                      | \$15,186,874.46 |
| Second Year .....        | 3,130.54                  | 28.28                              | 88,542.01             | 69.70                             | 218,194.92                | 97.98                                 | 306,736.92         | 2,609.29                        | 8,168,474.74    |
| Third Year .....         | 3,130.54                  | 28.28                              | 88,542.01             | 69.70                             | 218,194.92                | 97.98                                 | 306,736.92         | 2,609.29                        | 8,168,474.74    |
| Three Year Average ..... | 3,130.54                  | 32.59                              | 102,020.71            | 77.87                             | 243,775.16                | 110.46                                | 345,795.86         | 3,356.59                        | 10,507,941.31   |

Final Regulatory Flexibility Analysis

The Department's NPRM in this rulemaking contained initial Regulatory Flexibility Act and Paperwork Reduction Act analyses. As noted above in the introduction to the Department's PRA analysis, because of the overlapping nature of costs for the purposes of both the RFA and PRA analyses, the Department construed all comments received related to the Department's assessment of costs to the regulated community as comments addressing both the PRA and the RFA analyses. The Department's discussion of significant issues raised in comments related to cost estimates, the agency's response thereto, and adjustments made to the methodology as a result of comments is found in the PRA section of this preamble. See, supra, Paperwork Reduction Act, Sec. A. As explained in that section, based upon careful consideration of the comments, the Department made significant adjustments to the methodology employed to assess costs, and those adjustments resulted in modifications to conclusions on costs, which have been employed in the following final RFA analysis. Thus, the statutory requirement that the Department provide in its final RFA analysis "a summary of the significant issues raised by the public comments in response to

the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments,]" 5 U.S.C. 604(a)(2), has been satisfied. Moreover, the Department received no comments addressing or challenging the specific conclusion in the NPRM that the rule does not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 et seq., requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b).

In the 2003 and 2006 Form T-1 rules, the Department undertook regulatory flexibility analyses, utilizing the SBA's "small business" standard for "Labor Unions and Similar Labor Organizations." Specifically, the Department used the \$5 million standard established in 2000 (as updated in 2005 to \$6.5 million) for purposes of its regulatory flexibility

analyses. See 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard has been used for the Department's regulatory flexibility analysis in this rule.

The Department recognizes that the SBA has not established fixed financial thresholds for "organizations," as distinct from other entities. See *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, Office of Advocacy, U.S. Small Business Administration at 12-13, available at <http://www.sba.gov>. The Department further recognizes that under SBA guidelines, the relationship of an entity to a larger entity with greater receipts is a factor to be considered in determining the necessity of conducting a regulatory flexibility analysis. In this regard, the affiliation between a local labor organization and a national or international labor organization, a widespread practice among labor organizations subject to the LMRDA, presents a unique circumstance in determining whether and, if so, how, receipts of labor organizations should be aggregated, if at all, in assessing whether a regulatory flexibility analysis is required and how it should be conducted. The Department has concluded, however, that it would be inappropriate, given the past rulemaking concerning the Form T-1 and the Form LM-2, to depart from the

\$6.5 million receipts standard in preparing this regulatory flexibility analysis.

All numbers used in this analysis are based on 2006 data taken from the Office of Labor-Management Standards e.LORS database, which contains data from annual financial reports filed by labor organizations with the Department pursuant to the LMRDA, and BLS wage data.

#### 1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for and objectives of the rule. A more complete discussion is found in the preamble.

The objective of this rule is to increase the transparency of labor organization financial reporting by creating a new form for labor organization trust reporting (Form T-1) to enable members to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department. The Form T-1 is designed to close a reporting gap where labor organization finances in relation to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department.

One of the LMRDA's primary reporting obligations (Forms LM-2, LM-3, and LM-4) applies to labor organizations, as institutions; other important reporting obligations apply to officers and employees of labor organizations (Form LM-30), requiring them to report any conflicts or potential conflicts between their personal financial interests and the duty they owe to the labor organization they serve, and to employers who must report payments to labor organizations and their representatives (Form LM-10). *See* 29 U.S.C. 432, 433. Requiring labor organizations to report the information required by the Form T-1 provides an essential check for labor organization members and the Department to ensure that labor organizations, labor organization officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports relating to trusts are not required.

Under the Department's former LM-2 rule (superseded by the revised 2003 Form LM-2), a reporting obligation concerning section 3(l) trusts would arise only if the trust was a "subsidiary"

of the reporting labor organization and met other requirements previously set by the Department. *See* Form LM-2 instructions in effect prior to the 2003 final rule; *see also* 68 FR 58413. Thus, the former LM-2 rule, which was crafted shortly after the Act's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts. During the intervening decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280-81. For example, many labor organizations manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of labor organization financial practices, including business relationships with outside firms and vendors, increases the likelihood that labor organization officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

Such trusts "pose the same transparency challenges as 'off-the-books' accounting procedures in the corporate setting: Large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations." 67 FR 79282. The Department's former rule required labor organizations to report on only a subset of such trusts. This approach allowed a gap in the reporting of financial information concerning these trusts. The trust funds, if they had been retained by the labor organization, would have appeared on the labor organization's Form LM-2. Despite the close relationship between the labor organization and the trust and the purpose of the funds to benefit the members of the labor organization,

transparency ended once the funds left the labor organization and thereby limited accountability. Thus, Form T-1 will essentially follow labor organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, presumably for the members' benefit, such as joint trusts administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. *See* 67 FR 79285.

The Form T-1 is necessary to close this gap, and to prevent certain trusts from being used to evade the Title II reporting requirements. The Form T-1 will identify the trust's significant vendors and service providers. A labor organization member who is aware that a labor organization official has a financial relationship with one or more of these businesses will be able to determine whether the business and the labor organization official have made required reports. The purpose of the LMRDA disclosure requirements is to prevent financial malfeasance of labor organization money. 67 FR 79282-83. This purpose is demonstrably frustrated when existing reporting obligations fail to disclose, for example, opportunities for fraud. (Examples of situations where money in section 3(l) trusts was being used to circumvent or evade the reporting requirements can be found in the preamble and at 67 FR 79283.)

As explained in the preamble, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members from whose work the payments were earned. 67 FR 79282-83. This final rule will prevent circumvention and evasion of these reporting requirements by providing labor organization members with financial information concerning their labor organization's trusts when the labor organization, alone or in combination with other labor organizations, selects the majority of the directors or provides the majority of the trust's receipts.

#### 2. Legal Basis for Rule

The legal authority for this final rule is section 208 of the LMRDA. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations

prescribing the form and publication of reports required to be filed under title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 3(l) of the Act, 29 U.S.C. 402(l), defines a "trust in which a labor organization is interested."

### 3. Number of Small Entities Covered Under the Rule

The e.LORS database shows that 4,452 labor organizations filed the Form LM-2 in 2006. Based on an analysis of annual receipts reported by Form LM-2 filers in 2006, the Department estimates that of the 4,452 labor organizations subject to this rule, 4,228 of these, or 94.96 percent of all Form LM-2 filers, have receipts less than \$6.5 million, the SBA small business size standard for "Labor Unions and Similar Labor Organizations." These labor organizations have annual average receipts of \$1.3 million. Based on e.LORS data, the Department has determined that only 2,009 of these 4,228 labor organizations have an interest in a section 3(l) trust and will have to file Form T-1 reports. The Department estimates that these organizations will file approximately 2,752.33 reports annually (on average about 1.37 reports per labor organization). See PRA analysis, *supra*.

The affiliation among labor organizations may have an impact on the number of organizations that should be counted as "small organizations" under section 601(4) of the RFA, 5 U.S.C. 601(4). Section 601(4) provides in part: "The term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." However, for purposes of analysis here and for ready comparison with the RFA analyses in its earlier Form T-1 rulemakings, the Department has used the \$6.5 million receipts test for "small businesses," rather than the "independently owned and operated and not dominant" test for "small organizations." Application of the latter test likely would reduce the number of labor organizations that would be counted as small entities under the RFA.

### 4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

To the extent that there are federal rules that duplicate, overlap, or conflict with this rule, some specific exemptions

from the requirements of this rule have been provided. First, no Form T-1 need be filed for a trust that is required to file a Form 5500 with EBSA. In addition, no Form T-1 must be filed for a trust that is covered by the Federal Employees Health Benefits Act, 5 U.S.C. 8901 *et seq.* Finally, a labor organization is not required to report a Political Action Committee (PAC) fund, if publicly available reports on the PAC's funds are filed with federal or state agencies, nor must a labor organization file a Form T-1 for a political organization for which reports are filed with the IRS under 26 U.S.C. 527.

### 5. Differing Compliance or Reporting Requirements for Small Entities

Under the rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form T-1 under the LMRDA.

### 6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

OLMS has updated the e.LORS system to allow labor organizations to file Form T-1 as they file Form LM-2. Under the rule, labor organizations are directed to use an electronic reporting format to maintain financial information. This information can then be electronically compiled in the proper format for electronic filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1-866-401-1109.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

### 7. The Use of Performance Rather Than Design Standards

The Department considered a number of alternatives to the rule that could

minimize the impact on small entities. One alternative would be not to create a Form T-1. As stated above, this alternative was rejected because OLMS case files and experience demonstrate that the goals of the Act are not being met with regard to the finances of labor organizations held in section 3(l) trusts. As explained further in the preamble, labor organization members have no information on their labor organization's section 3(l) trusts. Labor organization members need this information to make informed decisions on labor organization governance.

Another alternative would be to limit the proposed reporting requirements to national and international parent labor organizations. However, the Department has concluded that such a limitation would eliminate the availability of meaningful information from local and intermediate labor organizations, which may have a far greater impact on and relevance to labor organization members, particularly since such lower levels of labor organizations generally set and collect dues and provide representational and other services for their members. Such a limitation would reduce the utility of the information to a significant number of labor organization members. Of the estimated 4,452 labor organizations subject to Form T-1 filing requirements under the proposal, just 101 are national and international labor organizations. Requiring only national and international organizations to file Form T-1 would not effectively increase labor organization transparency nor provide any deterrent to fraud and embezzlement by local and regional officials.

Another alternative would be to propose a phase-in of the effective date of the Form T-1, which would provide some labor organizations additional time to modify their recordkeeping systems in order to comply with the new reporting requirement. The Department has concluded, however, that the rule allows all Form T-1 filers sufficient time to adapt to the disclosure requirements and make any necessary adjustments to their recordkeeping and reporting systems. OLMS also plans to provide compliance assistance to any labor organization or section 3(l) trust that requests it. The Department believes it has minimized the economic impact of the form on small labor organizations to the extent possible while recognizing members' and the Department's need for information to protect the rights of labor organization members under the LMRDA.

8. Reporting, Recording and Other Compliance Requirements of the Rule<sup>19</sup>

This analysis only considers labor organizations with annual receipts between \$250,000 and \$6.5 million. Labor organizations with less than \$250,000 in annual receipts are not required to file the Form T-1 and those with annual receipts greater than \$6.5 million are outside the coverage of the Regulatory Flexibility Act. This rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact of the final rule will be the cost of obtaining and reporting required information.

Because the Form T-1 requires the provision of the same trust information regardless of the size of the reporting labor organization, the burden for completing and filing each Form T-1 is the same regardless of the size of the labor organization. In 2006, there were 380 labor organizations with annual receipts between \$250,000 and \$499,999 who indicated on their Form LM-2 that they were interested in at least one section 3(l) trust. As explained above, these labor organizations will spend, on average, \$4,851.20 in the first year per Form T-1 filed, or, on average for all labor organizations in this group, 1.35% of its annual receipts. The cost per Form T-1 filed in each subsequent year will drop to \$2,609.29 or, on average for all labor organizations in this group, 0.72% of its annual receipts.

The Department has determined that the impact on the 1,629 labor organizations with annual receipts between \$500,000 and \$6,500,000 that indicated that they were interested in at least one section 3(l) trust will be significantly smaller than the impact on labor organizations with between \$250,000 and \$499,999 in annual receipts. Like the smaller labor organizations, these labor organizations will spend, on average, \$4,851.20 in the first year per Form T-1 filed and \$2,609.29 each subsequent year. However, these costs will only require the labor organization to spend, on average for all labor organizations in this group, 0.28% of its annual receipts in the first year and, on average for all labor organizations in this group, 0.15% of its annual receipts in the second year.

TABLE 7—SUMMARY OF T-1 REGULATORY FLEXIBILITY ANALYSIS

| For labor organizations that meet the SBA small entities standard              | Total burden hours per respondent per T-1 filed | Total cost per respondent per T-1 filed |
|--|---|---|
| First Year Cost of Form T-1:   |   |   |
| For Labor Organizations with \$250,000 to \$499,999 in Annual Receipts .....   | 135.41  | \$4,851.20                              |
| Percent of Average Annual Receipts .....                                       | n.a.  | 1.35%                                   |
| Second Year Cost of Form T-1:  |   |   |
| For Labor Organizations with \$250,000 to \$499,999 in Annual Receipts .....   | 97.98   | 2,609.29                                |
| Percent of Average Annual Receipts .....                                       | n.a.  | 0.72%                                   |
| Percentage Reduction in Cost From Previous Year .....                          | n.a.  | 46.21%                                  |
| First Year Cost of Form T-1:   |   |   |
| For Labor Organizations with \$500,000 to \$6,500,000 in Annual Receipts ..... | 135.41  | 4,851.20                                |
| Percent of Average Annual Receipts .....                                       | n.a.  | 0.28%                                   |
| Second Year Cost of Form T-1:  |   |   |
| For Labor Organizations with \$500,000 to \$6,500,000 in Annual Receipts ..... | 97.98   | 2,609.29                                |
| Percent of Average Annual Receipts .....                                       | n.a.  | 0.15%                                   |
| Percentage Reduction in Cost From Previous Year .....                          | n.a.  | 46.21%                                  |

9. Conclusion

The Regulatory Flexibility Act does not define either “significant economic impact” or “substantial” as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, “what is ‘significant’ or ‘substantial’ will vary depending on the problem that needs to be addressed, the rule’s requirements, and the preliminary assessment of the rule’s impact.” *A Guide for Government Agencies, supra*, at 17. As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

In this case, as shown in the table above, the Department has determined that the costs of compliance with this rule in the first year will consist of between 0.28% and 1.35% of the revenue of all small labor organizations,

those with annual receipts between \$250,000 and \$6.5 million. In the subsequent years, compliance costs for those labor organizations will be between 0.15% and 0.72% of their annual receipts. The Department concludes that this economic impact is not significant. As to the number of labor organizations affected by this rule, the Department has determined by examining e.LORS data that in 2006, the Department received 4,228 Form LM-2s from labor organizations with receipts between \$250,000 and \$6,500,000, or just 17.6% of the 24,065 labor organizations that must file any of the annual financial reports required under the LMRDA (Forms LM-2, LM-3, or LM-4). The Department concludes that the rule does not impact a substantial number of small entities. Therefore, under 5 U.S.C. 605, the Department

concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

*Electronic Filing of Forms and Availability of Collected Data*

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS Web site. OLMS has also implemented a system to require Form LM-2 and Form T-1 filers and permit Form LM-3 and Form LM-4 filers to submit forms electronically with digital signatures. Labor organizations are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form.

The OLMS Internet Disclosure site at <http://www.unionreports.gov> is available for public use. The site contains a copy of each labor

<sup>19</sup> The estimated burden on labor organizations is discussed in detail in the section concerning the

Paperwork Reduction Act, *supra*. The figures

discussed in the text are derived from the figures explained in that section.

organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet. Form T-1 filings will be available on the Web site.

OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS Web site, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for labor organization officials regarding compliance.

Information about this system can be obtained on the OLMS Web site at <http://www.olms.dol.gov>. Digital signatures ensure the authenticity of the reports.

#### List of Subjects in 29 CFR Part 403

Labor unions, Trusts, Reporting and recordkeeping requirements.

#### Text of Rule

■ Accordingly, the Department amends part 403 of 29 CFR Chapter IV as set forth below:

#### PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 is revised to read as follows:

**Authority:** Labor-Management Reporting and Disclosure Act Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2007, May 2, 2007, 72 FR 26159.

■ 2. In § 403.2, paragraph (d) is revised to read as follows:

#### § 403.2 Annual financial report.

\* \* \* \* \*

(d)(1) Every labor organization with annual receipts of \$250,000 or more shall file a report on Form T-1 for each trust that meets the following conditions:

(i) The trust is of the type defined by section 3(l) of the LMRDA, i.e., the trust was created or established by the labor organization or the labor organization appoints or selects a member of the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(1)); and the labor organization, alone or with other labor organizations, either:

(A) Appoints or selects a majority of the members of the trust's governing board; or

(B) Makes contributions to the trust that exceed 50 percent of the trust's

receipts during the trust's fiscal year; and

(ii) None of the exemptions discussed in paragraph (d)(3) of this section apply.

(iii) For purposes of paragraph (d)(1)(i)(B), contributions by an employer pursuant to a collective bargaining agreement with a labor organization shall be considered contributions by the labor organization.

(2) A separate report shall be filed on Form T-1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

(3) No Form T-1 should be filed for any trust

(i) that meets the statutory definition of a labor organization and already files a Form LM-2, Form LM-3, or Form LM-4,

(ii) that the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees or a state or local central body,

(iii) established as a Political Action Committee (PAC) if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency,

(iv) established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service,

(v) constituting a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA)

(vi) required to file a Form 5500. For purposes of this section only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. section 1021 and/or 1024. A trust on whose behalf such annual report is required to be filed that is eligible for an exemption from filing the annual report, the Form 5500, or the Form 5500-SF is not included within this exemption and is deemed for purposes of this section only not to be a trust "required to file a Form 5500," even if a Form 5500 is filed on behalf of that trust. A trust eligible to file a notice or statement with the Secretary of Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation is not included within this exemption, even if it does file a Form 5500 or Form 5500-SF.

(4) A labor organization may complete only Items 1 through 15 and Items 26 through 27 (Signatures) of Form T-1 if annual audits prepared according to standards set forth in the Form T-1 instructions and a copy of the audit is filed with the Form T-1.

(5) If such labor organization is in trusteeship on the date for filing the annual financial report, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in Sec. 408.5 of this chapter.

■ 3. Amend § 403.5 by revising paragraph (d) to read as follows:

#### § 403.5 Terminal financial report.

\* \* \* \* \*

(d) If a labor organization filed or was required to file a report on a trust pursuant to Sec. 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T-1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. In § 403.8, revise paragraph (c)(3) to read as follows:

#### § 403.8 Dissemination and verification of reports.

\* \* \* \* \*

(c) \* \* \*

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual, or that would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.

\* \* \* \* \*

Signed in Washington, DC, this 24th day of September 2008.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains Form T-1 and instructions.

BILLING CODE 4510-86-P

FORM T-1 TRUST ANNUAL REPORT

U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Washington, DC 20210

Form Approved, Office of Management and Budget, No. 3220-XXXX, Expires: XX-XX-XXXX

This report is mandatory under P.L. 88-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

Form T-1 Trust Annual Report with sections: 1. FILE NUMBERS, 2. PERIOD COVERED, 3. AMENDED/HARDSHIP/TERMINAL, 4. NAME OF UNION, 5. DESIGNATION NUMBER, 6. UNIT NAME OF UNION, 7. MAILING ADDRESS OF UNION, 8. MAILING ADDRESS OF TRUST, 9. Are the union's records kept at its mailing address?, 10. Are the trust's records kept at its mailing address?, 11. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1?, 12. SIGNED: PRESIDENT, 13. SIGNED: TREASURER.

**COMPLETE ITEMS 16 THROUGH 25**

- 16. During the reporting period did the trust discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.)  
 Yes  No
- 17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale?  
 Yes  No
- 18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest?  
 Yes  No
- 19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates?  
 Yes  No
- 20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest?  
 Yes  No

**25. ADDITIONAL INFORMATION (if more space is needed, attach additional pages properly identified.)**

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| Item Number |  |
|-------------|--|

UNION FILE NUMBER (a): 

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TRUST FILE NUMBER (b): 

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- 21. Enter the total assets of the trust at the end of the reporting period.  
 \$
- 22. Enter the total liabilities (debts) of the trust at the end of the reporting period.  
 \$
- 23. Enter the total receipts of the trust during the reporting period.  
 \$
- 24. Enter the total disbursements of the trust during the reporting period.  
 \$

Please be sure to:

- \* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
- \* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
- \* Complete Schedules 1 through 3



**SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS**

(List all entities that received \$10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a.k.a.): 

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TRUST FILE NUMBER (b.k.): 

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**Initial Itemization Page**

| Name and Address<br>(A)  | Purpose<br>(C) | Date<br>(D) | Amount<br>(E) |
|--|----------------|-------------|---------------|
| (B) Type or Classification   |                |             |               |
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|  |                |             |               |
| (F) Total of Disbursements Listed Above                                    |                |             |               |
| (G) Total of All Disbursements from Continuation Pages with this Payee     |                |             |               |
| (H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G)) |                |             |               |
| (I) Total of All Non-Itemized Disbursements to this Payee                  |                |             |               |
| (J) Total of All Disbursements to this Payee (Sum of (H) and (I))          |                |             |               |

**SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

UNION FILE NUMBER (a): 

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TRUST FILE NUMBER (b): 

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| Page 1 of _____                            |       | (A) LAST, FIRST, MIDDLE INITIAL    | Gross Salary Disbursements (before any deductions) (B) | Allowances (C) | Disbursements for Official Business (D) | Other Disbursements (E) | (F) TOTAL |
|--|-------|------------------------------------|--|----------------|---|-------------------------|-----------|
| Full Name                                  | Title | Treasurer, Trustee, Attorney, etc. |  |                |   |                         |           |
| 1. Full Name                               | Title |                                    |  |                |   |                         |           |
| 2. Full Name                               | Title |                                    |  |                |   |                         |           |
| 3. Full Name                               | Title |                                    |  |                |   |                         |           |
| 4. Full Name                               | Title |                                    |  |                |   |                         |           |
| 5. Full Name                               | Title |                                    |  |                |   |                         |           |
| 6. Full Name                               | Title |                                    |  |                |   |                         |           |
| 7. Full Name                               | Title |                                    |  |                |   |                         |           |
| 8. Full Name                               | Title |                                    |  |                |   |                         |           |
| 9. Full Name                               | Title |                                    |  |                |   |                         |           |
| 10. Total from Continuation pages (if any) |       |                                    |  |                |   |                         |           |
| 11. Total of Lines 1 through 10            |       |                                    |  |                |   |                         |           |



**SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

UNION FILE NUMBER (a): 

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 TRUST FILE NUMBER (b): 

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| Page _____ of _____                   |                                    | Continuation Page                                      |                |   |                         |           |  |
|---------------------------------------|------------------------------------|--|----------------|---|-------------------------|-----------|--|
| Full Name                             | (A) LAST, FIRST, MIDDLE INITIAL    | Gross Salary Disbursements (before any deductions) (B) | Allowances (C) | Disbursements for Official Business (D) | Other Disbursements (E) | TOTAL (F) |  |
| 1. Full Name                          | Treasurer, Trustee, Attorney, etc. |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| 2. Full Name                          |                                    |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| 3. Full Name                          |                                    |  |                |   |                         |           |  |
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| 4. Full Name                          |                                    |  |                |   |                         |           |  |
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| 6. Full Name                          |                                    |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| 7. Full Name                          |                                    |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| 8. Full Name                          |                                    |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| 9. Full Name                          |                                    |  |                |   |                         |           |  |
| Title                                 |                                    |  |                |   |                         |           |  |
| <b>10. Total of Lines 1 through 9</b> |                                    |  |                |   |                         |           |  |

Public reporting burden for this collection of information is estimated to average 135.41 hours per response in the first year, 97.98 hours per response in the second year, and 97.98 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

## INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

### GENERAL INSTRUCTIONS

#### I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of \$250,000 or more (labor organization), must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the following conditions exist:

The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by a labor organization or a labor organization appoints or selects a member to the trust's governing board; and (2) the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(l)); and the labor organization alone, or in combination with other labor organizations, either

appoints or selects a majority of the members of the trust's governing board; or

contributes greater than 50% of the trust's receipts during the one-year reporting period.

Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions.

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. No Form T-1 need be filed for any trust that is an employee benefit plan that is required to file a Form 5500, i.e., whose plan administrator is required to file an annual report on behalf of the trust, under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1021 and/or 1024, for a plan year ending during the reporting period of the union. If

the plan administrator of the trust, however, is eligible for an exemption from filing a Form 5500 or Form 5500-SF, then a Form T-1 must be filed for that section 3(l) trust regardless of whether a Form 5500 or Form 5500-SF is filed on its behalf. For a definition of plans "required to file a Form 5500" for purposes of filing the Form T-1, see 29 CFR 403.2(d)(3)(vi).<sup>20</sup> No report need be filed for federal employee health benefit plans subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), nor for any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843.

An abbreviated report may be filed for any covered trust or trust fund for which an independent audit has been conducted, in accordance with the standards (as

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<sup>20</sup> The following sections of title 29 of the Code of Federal Regulations identify for purposes of these instructions, the types of ERISA plans that are not *required* to file a Form 5500: section 2520.104-20 (small unfunded, insured, or combination welfare plans), section 2520.104-22 (apprenticeship and training plans), section 2520.104-23 (unfunded or insured management and highly compensated employee pension plans), section 2520.104-24 (unfunded or insured management and highly compensated employee welfare plans), section 2520.104-25 (day care center plans), section 2520.104-26 (unfunded dues financed welfare plans maintained by employee organizations), section 2520.104-27 (unfunded dues financed pension plans maintained by employee organizations), section 2520.104-43 (certain small welfare plans participating in group insurance arrangements), and section 2520.104-44 (large unfunded, insured, or combination welfare plans; certain fully insured pension plans). *Labor organizations must file a Form T-1 for these types of plans.*

adopted from 29 CFR. 2520.103-1) as discussed in the next paragraph.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements.

The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

## II. WHEN TO FILE

The Form T-1 requirements take effect on January 1, 2009; they apply to a labor organization whose fiscal year *and* the fiscal year of its section 3(l) trust begin on or after January 1, 2009. Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recently completed fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions. Examples of filing dates for the Form T-1 follow:

### Where the trust and labor organization have the same fiscal years

- The trust and labor organization have fiscal years ending on December 31. The Form T-1 for the fiscal year ending December 31, 2009 must be filed not later than March 31, 2010.
- The trust and the labor organization each has a fiscal year that ends on September 30. The labor organization's first Form T-1 will be for the trust's fiscal year ending September 30, 2010 and must be filed not later than December 29, 2010.

### Where the trust and labor organization have different fiscal years

- The trust's fiscal year ends on June 30. The labor organization's fiscal year ends on September 30.

Its first Form T-1 for this trust will be for the trust's fiscal year ending June 30, 2010 and must be filed not later than December 29, 2010.

- The trust's fiscal year ends on September 30. The labor organization's fiscal year ends on December 31. Its first Form T-1 for this trust will be for the trust's fiscal year ending September 30, 2010 and must be filed not later than March 31, 2011.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

## III. HOW TO FILE

Form T-1 must be prepared using software available on the OLMS Web site at [www.olms.dol.gov](http://www.olms.dol.gov) and must be submitted electronically to the Department. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Information on downloading the electronic filing software and a detailed user guide can be found on the OLMS Web site at <http://www.olms.dol.gov>.

### HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing

hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

#### TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at , by phone at 202-693-0123, or by fax at 202-693-1340.

*Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

#### CONTINUING HARDSHIP EXEMPTION:

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed

electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5609  
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of labor organization members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

*Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

#### **IV. PUBLIC DISCLOSURE**

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at <http://www.unionreports.gov>. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-1519  
Washington, DC 20210-0001

#### **V. OFFICER RESPONSIBILITIES AND PENALTIES**

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly

failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

#### **VI. RECORDKEEPING**

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

#### **SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS**

#### **VII. LABOR ORGANIZATIONS IN TRUSTEESHIP**

Any labor organization that has placed a

subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. In order for the trustees to sign, click on the "Add Signature Block" button on page 1 to open a signature page near the end of the form.

## VIII. COMPLETING FORM T-1

### INTRODUCTION

Upon opening the Form T-1, a Document Status dialog box displays to briefly explain the special features of this document. Click on the "close" button to proceed.

Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by the software based on information you entered when you accessed and downloaded the form from the OLMS Web site. You cannot edit these fields.

Be sure to click on the "Validate Form" button after you have completed the form but before you sign it. This action will generate an "Errors Page" listing any errors that must be corrected before you sign the form.

### ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed.

Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

**1. FILE NUMBER** — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at <http://> or by contacting the nearest OLMS field office listed at the end of these instructions.

The software will enter the trust's 7-digit (T### ###) file number in Item 1(b) and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW  
Room N-5616  
Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at .

**2. PERIOD COVERED** — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form T-1. If the dates are incorrect, you must download another form using the correct dates.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

**3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT** — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Select Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

**4. NAME OF UNION** — Enter the name of the national or international labor organization or if the labor organization is a subordinate entity of such organization the name of the national or international labor organization that granted its charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its

subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

**5. DESIGNATION** — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

**6. DESIGNATION NUMBER** — Enter the number or other identifier, if any, by which the labor organization is known.

**7. UNIT NAME** — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

**8. MAILING ADDRESS OF UNION** — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included.

**9. PLACE WHERE UNION RECORDS ARE KEPT** — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

**10. NAME OF TRUST** — The software will enter the name of the trust. This is the trust name you entered when you downloaded Form T-1. If the name is incorrect, you must download another form using the correct name.

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of

Reports, Disclosure, and Audits by telephone at 202-693-0124, by e-mail at , or by fax at 202-693-1345. Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

**11. TRUST EMPLOYER IDENTIFICATION NUMBER (EIN) —**

Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.

**12. PURPOSE —** Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to labor organization members, the purpose may be “credit union.”

**13. MAILING ADDRESS OF TRUST —**

The software will enter the current address where mail is most likely to reach the trust as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent, and any building and room number should be included. These fields are pre-filled from the OLMS database, but can be edited by the filer.

**14. PLACE WHERE TRUST RECORDS ARE KEPT —**

If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer “Yes.” If not, answer “No” and provide in Item 25 (Additional Information) the address where the trust’s records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

*Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.*

**15. AUDIT EXEMPTION —**

Answer “Yes” to Item 15 if the labor organization will be submitting an independent, certified audit in place of the

remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

**16. LOSSES OR SHORTAGES —**

Answer “Yes” to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. A “loss or shortage of funds or other property” within the meaning of Item 16 does not include delinquent contributions from employers, delinquent accounts receivable, losses from investment decisions, or overpayments of benefits. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

**17. ACQUISITION OR DISPOSITION OF ASSETS —**

If Item 17 is answered “Yes,” describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust’s books or the cost or other basis at which any assets disposed of were carried on the trust’s books.

A filer may group similar acquired or disposed assets together, in a larger category, as well as grouping multiple assets acquired from or disposed of to the

same source. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

**18. LIQUIDATION OF LIABILITIES** — If Item 18 is answered “Yes,” provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust’s liabilities without the disbursement of cash.

**19. LOANS AT FAVORABLE TERMS** — If Item 19 is answered “Yes,” provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the labor organization officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

**20. WRITING OFF OF LOANS** — If Item 20 is answered “Yes,” describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

## FINANCIAL DETAILS

### REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in \$.01 through \$.49 should be rounded down. Amounts ending in \$.50 through \$.99 should be rounded up.

Enter a single “0” if there is nothing to report.

### REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

## ASSETS AND LIABILITIES

**21. ASSETS** — Enter the total value of all the trust’s assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter “0” if the trust had no assets at the end of the reporting period.

**22. LIABILITIES** — Enter the total amount of all the trust’s liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter “0” if the trust had no liabilities at the end of the reporting period.

## RECEIPTS AND DISBURSEMENTS

Receipts are money actually received by the trust and disbursements are money actually paid by the trust. The purpose of Items 23 and 24 is to report the flow of cash in and out of the trust during the reporting period. Transfers between separate bank accounts or between special funds of the trust do not represent the flow of cash in and out of the trust and should not be reported as receipts and disbursements.

Since Items 23 and 24 report cash flowing in and out of the trust, “netting” is not permitted. “Netting” is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or a disbursement.

Do not include in Item 23 or 24 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., “rolled over”) in

U.S. Treasury securities, marketable securities, or other investments during the reporting period. "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

Receipts and disbursements by an agent on behalf of the trust are considered receipts and disbursements of the trust and must be reported in the same detail as other receipts and disbursements.

**23. RECEIPTS** — Enter the total amount of all receipts of the trust during the reporting period including cash, interest, dividends, realized short and long term capital gains, rent, royalties, and other receipts of any kind. Enter "0" if the trust had no receipts during the reporting period.

**24. DISBURSEMENTS** — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

### SCHEDULES 1 THROUGH 3

#### SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of \$10,000 or more; or 2) total receipts from any single entity or individual that aggregate to \$10,000 or more during the reporting period. This process is discussed further

below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of \$10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to \$10,000 or more during the reporting period. This process is discussed further below.

#### Exemptions

Labor organizations are not required to separately identify any individual or entity on Schedule 1 from which the trust receives receipts of \$10,000 or more, individually or in the aggregate, during the reporting period, if the receipts are derived from pension, health, or other benefit contributions that are provided pursuant to a collective bargaining agreement covering such contributions. Additionally, the labor organization is not required to itemize benefit payments on Schedule 2 from the trust to a plan participant or beneficiary, if the detailed basis on which such payments are to be made is specified in a written agreement.

Filers should not include on Schedules 1 and 2 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period. "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

*Note: Disbursements to officers and employees of the trust who received more than \$10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.*

**Example 1:** The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of \$10,000 is made each month. Each payment would be listed in Schedule 2.

**Example 2:** The trust received a settlement of \$14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

**Example 3:** The trust made three payments of \$4,000 each to an office supplies vendor for office supplies during the reporting period. The \$12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

#### Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of \$10,000 or more or (2) total receipts/disbursements that aggregate to \$10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. Additional Itemization Page(s) for additional payers/payees can be generated and added to the end of Form T-1 by pressing the "Add More Receipts" or "Add More Disbursements" button located at the top of the first Initial Itemization Page. If the number of receipts/disbursements exceeds the number of space provided on the Initial Itemization Page a Continuation Itemization Page(s) can be generated and

added to the end of the Form T-1 by pressing the "More Receipts for this Payee" or "More Disbursements for this Payer" button located below Column (A). The software will automatically enter the name, address, and type or classification of the payee/payer on the Continuation Itemization Page(s).

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

The software will enter in Line (H) the total of all itemized transactions with this

payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than \$10,000 each).

The software will enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I))

#### Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the labor organization.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the labor organization should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the labor organization should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a

description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

#### Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than \$10,000 in the aggregate in the reporting year from the trust. Employees receiving more than \$10,000 must be reported on Schedule 3;
- Information that would expose the reporting labor organization's prospective organizing strategy. The labor organization must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting labor organization or an affiliated labor organization is engaged or will be

engaged in contract negotiations. The labor organization must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the labor organization or trust is otherwise prohibited by law from disclosing; and,
- Information in those situations where disclosure would endanger the health or safety of an individual.

In Item 25 (Additional Information) the labor organization must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A labor organization member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any labor organization member (and the Department), upon request, has the right to review the undisclosed information in the labor organization's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The labor

organization also must make a good faith effort to obtain additional information from the trust.

Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would violate the Health Insurance Portability and Accountability Act of 1996 or applicable regulations or other state or federal law, a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual.

**NOTE:** *Under no circumstances should a filer disclose the identity of the recipient of HIPAA-related payments. Likewise, a filer should not disclose the identity of the recipient of any payment where doing so would violate federal or state law, a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual. Filers should not include social security or bank account numbers in completing the form.*

### **SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than \$10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. Benefit payments made to an officer or employee of the trust as a plan participant or beneficiary should not be reported as a payment to a particular individual if the detailed basis on which such payments are to be made is specified in a written agreement. Any such payments, instead, should be included in the total disbursements in Item 24. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

For purposes of completing the Form T-1,

- An “officer of the trust” means any person designated as an officer in the trust’s governing documents, any person authorized to perform the executive functions of the trust, and any member of its executive board or similar governing body.
- An “employee of the trust” means any individual employed by the trust.

These definitions will require a fact-specific inquiry by filers to determine whether trustees, the trust administrator, and other individuals performing service to the trust under its control or the trust administrator’s control are officers or employees of the trust.

Continuation pages can be generated if needed by clicking on the “Add More Disbursements To Officers Of Trust” button located at the top of Schedule 3.

**NOTE:** A “direct disbursement” to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.

An “indirect disbursement” to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. “On behalf of the officer or employee” means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.

**Column (A):** Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer

of the trust at any time during the reporting period or (2) an employee of the trust who received \$10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

**Column (B):** Enter the gross salary of the officer or employee (before tax withholdings and other payroll deductions). Include disbursements by the trust for “lost time” or time devoted to trust activities.

**Column (C):** Enter the total allowances made by direct and indirect disbursements to the officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

**Column (D):** Enter all direct and indirect disbursements to the officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers’ or employees’ meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably

expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.

- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but they should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Payments to individuals, other than officers and employees of the trust, who perform work or service for the trust;
- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;
- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of

offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;

- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

**Column (E):** Enter all other direct and indirect disbursements to the officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust. Benefits payments to the trust officers and employees are not of the type required to be reported in Schedule 3 if the detailed basis on which such payments are to be made is specified in a written specific trust agreement.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to the officer or employee essentially for the officer or employee's personal use rather than for use in conducting official business.

**Column (F):** The software will add Columns (B) through (E) of each line and enter the totals in Column (F).

The software will enter on Line 10 the totals from any continuation pages for

Schedule 3.

The software will enter on Line 11 the totals of Lines 1 through 10 for Columns (B) through (F).

### **SPECIAL RULES FOR AUTOMOBILES**

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

### **ADDITIONAL INFORMATION AND SIGNATURES**

**25. ADDITIONAL INFORMATION** — Use Item 25 to provide additional information as indicated on Form T-1 and in these

instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

**26-27. SIGNATURES** — Before entering the date and signing the form, enter the telephone number at which the signatories conduct official business.

The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report. Forms must be signed with digital signatures. Information about digital signatures can be obtained on the OLMS Web site at <http://www.olms.dol.gov>.

### **IX. TRUSTS THAT HAVE CEASED TO EXIST**

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor  
 Employment Standards Administration  
 Office of Labor-Management Standards  
 200 Constitution Avenue, NW  
 Room N-1519  
 Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."
- Select Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.
- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

### ***If You Need Assistance***

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA  
 Birmingham, AL  
 Boston, MA

Buffalo, NY  
 Chicago, IL  
 Cincinnati, OH  
 Cleveland, OH  
 Dallas, TX  
 Denver, CO  
 Detroit, MI  
 Grand Rapids, MI  
 Guaynabo, PR  
 Honolulu, HI  
 Houston, TX  
 Kansas City, MO  
 Los Angeles, CA  
 Miami (Ft. Lauderdale), FL  
 Milwaukee, WI  
 Minneapolis, MN  
 Nashville, TN  
 New Haven, CT  
 New Orleans, LA  
 New York, NY  
 Newark (Iselin), NJ  
 Philadelphia, PA  
 Pittsburgh, PA  
 St. Louis, MO  
 San Francisco, CA  
 Seattle, WA  
 Tampa, FL  
 Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, labor organization officer and employee reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at <http://www.olms.dol.gov>. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

<http://www.olms.dol.gov>

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#### **LIST OF PUBLIC LAWS**

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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. 1777/P.L. 110-327**

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#### **H.R. 2608/P.L. 110-328**

SSI Extension for Elderly and Disabled Refugees Act (Sept. 30, 2008; 122 Stat. 3567)

#### **H.R. 2638/P.L. 110-329**

Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Sept. 30, 2008; 122 Stat. 3574)

#### **H.R. 6984/P.L. 110-330**

Federal Aviation Administration Extension Act of 2008, Part II (Sept. 30, 2008; 122 Stat. 3717)

#### **S. 171/P.L. 110-331**

To designate the facility of the United States Postal Service

located at 301 Commerce Street in Commerce, Oklahoma, as the "Mickey Mantle Post Office Building". (Sept. 30, 2008; 122 Stat. 3720)

#### **S. 2339/P.L. 110-332**

To designate the Department of Veterans Affairs clinic in Alpena, Michigan, as the "Lieutenant Colonel Clement C. Van Wagoner Department of Veterans Affairs Clinic". (Sept. 30, 2008; 122 Stat. 3721)

#### **S. 3241/P.L. 110-333**

To designate the facility of the United States Postal Service located at 1717 Orange Avenue in Fort Pierce, Florida, as the "CeeCee Ross Lyles Post Office Building". (Sept. 30, 2008; 122 Stat. 3722)

#### **S. 3009/P.L. 110-334**

To designate the Federal Bureau of Investigation building under construction in Omaha, Nebraska, as the "J. James Exon Federal Bureau of Investigation Building". (Oct. 1, 2008; 122 Stat. 3723)

Last List September 29, 2008

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#### **Public Laws Electronic Notification Service (PENS)**

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