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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AH81

Cotton Program Changes for Loans, Loan Deficiency Payments, Upland Cotton, and Extra Long Staple Cotton

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is revising regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to administer loan and payment programs for upland cotton and extra-long staple (ELS) cotton producers and establishing new regulations to specify payment provisions for domestic users of upland cotton. The 2008 Farm Bill generally extends the existing upland cotton and ELS cotton programs with some changes in calculations of the adjusted world price (AWP) and loan schedules for upland cotton. The new program for economic adjustment assistance for domestic users of upland cotton will pay a statutorily specified rate per pound and provides that such payments may only be used for capital investments (for example, plant, equipment, land, machinery).

DATES: *Effective Date:* October 31, 2008. **Note:** Certain provisions start based on crop years or effective dates specified in the 2008 Farm Bill; *see* the table detailing start dates in the discussion below.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Cotton Program Manager, Price Support Division, USDA, FSA, Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; *phone:* (202) 720–8481; *e-mail: gene.rosera@wdc.usda.gov*; or fax: (202) 690–1536. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule implements provisions in the 2008 Farm Bill (Pub. L. 110–246) for cotton programs administered by CCC. The cotton programs are: (1) Recourse seed-cotton loans for upland and ELS cotton, (2) non-recourse marketing assistance loans that may be repaid at a statutorily set repayment rate and loan deficiency payments for upland cotton, (3) non-recourse marketing assistance loans for ELS cotton that are to be repaid at principal plus interest, and (4) the ELS competitiveness payment program providing payments to domestic users and exporters of ELS cotton. This rule also includes regulations for the new Economic Adjustment Assistance to Users of Upland Cotton Program that provides payments to domestic users of upland cotton.

The regulations in 7 CFR part 1427 specify eligibility and application requirements for cotton program applicants, methods for establishing and announcing upland cotton loan repayment rates, and rates for loan deficiency payments. The loan programs for cotton provide short term financing and improve farm-price stability.

The basic structure of the existing programs is not changing, but the 2008 Farm Bill requires some substantive changes in the regulations, including a change in the way AWP for upland cotton is calculated and a reduction in the rates used for calculating warehouse storage credits. This rule also makes minor changes to the regulations for clarity and to reflect current industry practice, to update the crop years as required by the 2008 Farm Bill, and to remove expired sections that only applied to certain previous crop years. The changes are discussed below.

In general, this rule implements changes in the regulations that are explicitly required by the 2008 Farm Bill. Under the 2008 Farm Bill, for example:

- A new program is required for economic assistance for users of upland cotton. Through this new program, CCC will make payments to domestic cotton mills for capital investments (to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery). The maximum payment rate is 4 cents per pound for all cotton consumed by domestic mills beginning August 1, 2008; the rate will be 3 cents per pound beginning August 1, 2012. The new program pays on both domestic and foreign cotton.
- Storage credits to upland cotton loan repayment values are allowed for the 2008 through 2012 crop years, but reduced by 10 percent from the 2006 rate for the 2008 through 2011 crop years and reduced by 20 percent from the 2006 rate beginning with the 2012 crop year. (Storage is credited when AWP is less than the total of the loan rate plus interest plus storage, which is consistent with the existing repayment provisions.)
- The upland cotton loan schedule is revised to ensure that premiums and discounts are more accurately aligned with prevailing market valuations and facilitate movement of cotton into the market.

In general, the regulatory changes address requirements for (1) the new program for economic adjustment assistance for domestic users of upland cotton, (2) storage and loan rate adjustments, (3) termination of commodity certificates and payment limitations, (4) AWP calculation changes, (5) eligibility, (6) fraud or unauthorized disposition, (7) warehouse receipts, collateral, and storage, and (8) updates and miscellaneous corrections. The regulatory changes are described below by these categories.

Economic Adjustment Assistance for Domestic Users of Upland Cotton

This rule adds a new Subpart C, ''Economic Adjustment Assistance to Users of Upland Cotton'' (as discussed below, this rule also removes the existing Subpart C, ''Upland Cotton User Marketing Certificates''). Section 1207(c) of Subtitle B of Title I of the 2008 Farm Bill requires this new assistance. Eligible domestic users of upland cotton include persons who open bales of upland cotton for spinning, making paper, and processing non-woven cotton fabric in the United States. CCC will pay 4 cents per pound for all cotton consumed by domestic

mills beginning August 1, 2008; the rate will be 3 cents per pound beginning August 1, 2012. Payments may only be used for capital investments (to acquire, construct, install, modernize, develop, convert, or expand land, plant, buildings, equipment, facilities, or machinery). Further, such capital expenditures must be directly attributable to the purpose of manufacturing upland cotton into eligible cotton products in the United States.

The new program payments apply to both domestic and foreign cotton and will be made without regard to world or domestic cotton prices.

Storage and Loan Rate Adjustments

The 2008 Farm Bill requires CCC to adjust upland cotton loan rates so that the resulting loan rates more accurately reflect relative market valuations. Specifically, starting with the 2008 crop, CCC will no longer adjust upland cotton loan rates for location. This provision eliminates premiums previously provided to production near domestic mills. For example, cotton at some South Carolina locations had previously been provided a location premium of 1.9 cents per pound over the base-quality loan rate of 52 cents per pound. To eliminate the location adjustment, this rule removes the mention of ''county'' in the definition of loan deficiency payment in section 1427.3 and removes the reference to loan rate location adjustment in section 1427.160. These changes are consistent with current marketing of cotton because most domestic cotton is priced based on export price considerations.

Also, section 1204(e) of the 2008 Farm Bill specifically provides for fine count and transportation adjustments to the AWP. This rule has provisions regarding both and to the extent they differ from previous policies for the 2007 crop those new provisions will be applied to outstanding 2007 crop loans. That is, the AWP calculations under this rule for 2009 and 2007 crops will be the same. Provisions of the 2002 legislation that covers the 2007 crop, namely the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–110) is broad enough to allow the 2007 crop adjustments.

The 2008 Farm Bill requires CCC to credit loan repayment values by a portion of warehouse storage charges that accrue during the loan period when AWP is sufficiently low. Under this new authority, the maximum warehouse storage rates established by CCC for calculating storage credits for upland cotton will, as provided in the 2008 Farm Bill, be reduced from the 2006 maximum rate by 10 percent for the 2008 through 2011 crops and by 20 percent beginning with the 2012 crop. This rule changes section 1427.19, ''Repayment of Loans,'' accordingly. The storage payment reduction provisions do not apply to the 2007 crop.

The 2008 Farm Bill requires that a loan deficiency payment (LDP) rate be the rate effective on the date the producer requested the payment. Some cotton users purchase cotton on a ''gin-direct'' basis that provides for the cotton to be priced and shipped directly after the date of ginning. Under such contracts, any LDP rate is established as the rate effective on the date the cotton is ginned even though the exact date of ginning and any LDP rate may be unknown to both parties at the time the contract is made. To accommodate the sale of cotton under such commercial contracts, if a producer who meets other LDP eligibility and application requirements requests an LDP on ''gin-direct'' terms, CCC will consider the date the cotton is ginned to be the date of the LDP request.

This final rule implements a provision of the new Average Crop Revenue Election (ACRE) program established by the 2008 Farm Bill. Under that program, during each of the 2009 through 2012 crop years, the loan rate for upland cotton will be reduced by 30 percent for producers who elect to participate in ACRE. This rule amends sections 1427.8, ''Amount of loan,'' and 1427.160, ''Applicability,'' accordingly.

Termination of Commodity Certificates and Payment Limitations

As required by the 2008 Farm Bill, this rule also amends the cotton program regulations to end the availability of commodity certificates and the applicability of payment limitation to gains from marketing assistance loans and loan deficiency payments.

Beginning with the 2010 crop, as provided in section 1607 of the 2008 Farm Bill, CCC will no longer provide commodity certificates for the purpose of exchange for cotton loan collateral. Accordingly, this rule is removing Subpart C from 7 CFR part 1427, which concerns marketing certificates, and revising the references to marketing certificates in other sections of part 1427 so that the provisions are no longer effective after the 2009 crop year.

Starting with the 2009 cotton crop year, CCC will no longer limit the gains from marketing assistance loans and loan deficiency payments. These changes will be implemented in broader, multi-commodity regulations to be issued later.

AWP Calculation Changes

This rule amends section 1427.25, ''Determination of the prevailing world market price and the adjusted world price for upland cotton,'' to be consistent with provisions of the 2008 Farm Bill. This rule amends the regulations to establish a new fine count adjustment, a new method for calculating the AWP transportation adjustment, and a new process for AWP calculations during the transition between crop years. The fine count adjustment to the upland cotton AWP will apply to any CCC-established loan rate premium factor for a quality higher than Middling 1$^{3}/_{32}$-inch. The transportation adjustment to the weekly AWP is simplified by this rule to use values provided to CCC from its survey of domestic cotton merchandisers. CCC's process for determining AWP during the transition period between crop years has previously been a process of blending current and forward prices over a six-week period. The revised regulation, consistent with the 2008 Farm Bill, provides for use of forward-crop price quotations prior to July 31 of a marketing year if there are insufficient current-crop prices and the forward-crop price is the lowest available price quotation. Additionally, this rule amends the AWP announcement time from 5 p.m. to 4 p.m. eastern time each Thursday. This rule also amends section 1427.3, ''Definitions,'' to modify the definitions of terms used in the price determination formula, consistent with the AWP changes. Previously, in a rule published May 27, 2008 (73 FR 30274–30277) CCC shifted to the use of Far East prices for setting loan repayment rates.)

Eligibility

This rule amends section 1427.4, ''Eligible Producer.'' As required by section 1603 of the 2008 Farm Bill, States or political subdivisions or their agencies are no longer eligible for loans or loan deficiency payments.

This rule amends section 1427.5, ''General eligibility requirements,'' to provide that effective with the 2009 crop, flat bales are not eligible to be tendered as loan collateral. This amendment is consistent with current industry practice as flat bales are not marketable in normal trade.

Fraud or Unauthorized Disposition

In section, 1427.18, ''Liability of the Producer,'' this rule amends the way CCC values the loan collateral in circumstances of fraud or unauthorized disposition. CCC will value loan

collateral at its loan value rather than its sales price in circumstances of fraud or unauthorized disposition. This amendment is not specifically required by the 2008 Farm Bill; it is being made for clarity and consistency with overall CCC loan settlement and inventory policy. Rather than requiring the relocation of loan collateral, CCC will accelerate the maturity date of cotton if relocation is not accomplished by the producer. Commonly, this provision is used following warehouse closings or storm damage.

Warehouse Receipts, Collateral, and Storage

This rule revises the definition in section 1427.3 of a ''warehouse receipt'' for cotton as loan collateral. Effective starting with the 2009 crop of cotton, CCC will require warehouse receipts to be submitted to CCC in an electronic format; paper warehouse receipts will not be accepted. Paper warehouse receipts are rarely used for modern commercial transactions and, therefore, are considered unmarketable by CCC. This rule revises the definitions of ''warehouse receipt'' and ''transfer'' to include a reference to receipts that are certificated for delivery of a futures pricing contract and revises the definition of ''transfer'' to include the exchange of electronic warehouse receipts without physically relocating the cotton. This rule updates section 1427.10, ''Approved Storage,'' accordingly.

This rule amends section 1427.21, ''Settlement.'' Traditionally, CCC settled cotton loans for which collateral was delivered to CCC based on the weight and quality indicated on the original warehouse receipt. However, for bales that are relocated during the loan period and subsequently delivered to CCC, the original warehouse receipt is cancelled and a subsequent receipt is delivered to CCC in satisfaction of the loan obligation. For such cases, this rule specifies that CCC may elect to calculate settlement values based on the weight, condition, and classification as reflected on the receipt delivered to CCC rather than based on the original receipt information. CCC will use this new settlement option only when there is significant variation in weights or quality between the original and subsequent bale receipts. This change will ensure that a fair and accurate settlement is made based on the most current and accurate weight and quality.

In addition, clarifying changes are being made to section 1427.21 to identify charges payable by the producer if cotton loan collateral is delivered to CCC to satisfy the loan obligation. These charges include warehouse receiving charges, new bale ties, unpaid warehouse compression, storage charges for any period of yard storage, storage surcharges that apply during or within three months following the period of the loans, and other associated charges that may be levied by the warehouse specific to forfeited cotton. This is an improved statement of existing policy and is not required by the Farm Bill.

This rule adds a provision to section 1427.7, ''Maturity of Loans,'' to allow CCC to accelerate the maturity date of the cotton stored as collateral in certain situations, such as when the cotton is improperly warehoused and subject to damage. A producer may still transfer cotton loan collateral as provided under section 1427.16, ''Movement and Protection of Warehouse-stored Cotton,'' but CCC will no longer relocate loan bales at its expense from one CCC-approved warehouse to another. For consistency, therefore, this rule removes language regarding CCC transfer of cotton from section 1427.16.

This rule removes all references to reconcentration of cotton from 7 CFR part 1427. Reconcentration involves the process of moving CCC-owned cotton from one approved warehouse to another, which is a CCC inventory issue that is not relevant to cotton loan regulations.

This rule revises section 1427.5(b)(2) to clarify that cotton submitted for loan deficiency payments (LDP) is not required to be stored in a warehouse that meet the approved storage requirements of CCC cotton loan collateral. This revision is for clarity and does not imply any change in CCC storage policies. Cotton presented for LDPs has not been required to be receipted by an approved cotton storage warehouse because such cotton is usually shipped from the gin to the user and avoids the warehousing process.

This rule amends section 1427.10(c) to provide that warehouses approved to store CCC cotton loan collateral outside are required to report location indicators and effective dates for any loan bale stored outside. CCC uses such information to compute any denied storage credits. This revision simply states how the information is currently obtained from warehouses through their electronic warehouse receipt providers; the reporting requirement was first established by regulations in 2006.

Start Dates for Various Provisions

This final rule becomes effective when filed for public inspection by the Office of the **Federal Register**. A number of provisions included in these regulatory changes start based on a crop year or date specified in the 2008 Farm Bill.

The following table shows the start times for these provisions:

Regulatory section	Provision
1427.25(f)(1)(i)	The fine count adjustment will be effective for 2007 and 2008-crop loan redemptions effective October 31, 2008.
1427.19(h)(1)	The 10 percent reduction from 2006 rates in warehouse storage credits will be effective for the 2008-crop loan redemptions effective as soon as practicable after October 31, 2008.
1427.19(h)(2)	The 20 percent reduction from 2006 rates in warehouse storage credits will be effective for 2012-crop loan redemptions.
1427.5(b)(5)	Ineligibility of flat bales for loan or LDP will be effective for 2009 and subsequent crops of cotton.
1427.3	Ineligibility of bales represented by paper warehouse receipts will be effective for 2009 and subsequent crops of cotton.
1427.8(e)	The 30 percent reduction of loan rates for upland cotton for producers enrolled in ACRE will be effective for 2009 and subsequent crops of cotton.
1427.22(a)	The termination of use of commodity certificates for redeeming upland cotton marketing assistance loans will be effective August 1, 2010 for loans of any crop year.
1400.1(g)	Payment limitation applicable to loan gains and loan deficiency payments will not apply to loans and LDPs for 2009 and subsequent crops of cotton.
1427.101(a)	The Economic Adjustment Assistance to Users of Upland cotton is applicable to quantities of cotton used starting August 1, 2008.
Subpart G, 1427.101(a)	The 2008 Farm Bill provides that eligibility for payments is provided to bales marketed as of June 18, 2008 for The ELS Competitiveness Payment Program.

Updates and Miscellaneous Corrections

While changing and updating the regulations as required by the 2008 Farm Bill, CCC is also making a number of ''housekeeping'' changes to clean up the regulations. In general, CCC is making changes to add clarity, make administrative improvements, correct typographical errors, add consistency with current CCC and industry practices, remove expired regulations, and improve organization. These changes do not represent substantive policy or administrative changes.

This rule amends regulations regarding the classification of cotton to require that all cotton tendered for loan or LDP must be classed by the Agricultural Marketing Service (AMS). Previously, the regulations in 7 CFR part 1427 provided that CCC could approve other entities to provide classification information. CCC does not currently perform this function or delegate it to others; current classification is always done by AMS. This rule amends the regulation to be consistent with actual CCC practice. This change is implemented in several sections of the regulations, including the ''Definitions'' section and the ''General Eligibility Requirements'' section as well as the ''Classification of cotton'' section (1427.3, 1427.5, and 1427.9, respectively). Additionally, this rule provides that, for purposes of loan and loan deficiency payment calculations, CCC will only use the classification information received directly from AMS rather than any classification information transmitted by another entity. This policy has reduced transaction errors and delays.

This rule makes several changes to the regulations in 7 CFR part 1427 Subpart D, ''Recourse Seed Cotton Loans.'' This rule deletes a reference to Cooperative Marketing Associations (CMA) requesting seed cotton loans at a central county office. This revision is being made because CCC authorizes seed cotton loans to be made to producer members of a CMA but not directly to a CMA. This change reflects existing CCC policy. The 2008 Farm Bill requires changes in the way that payments are attributed to legal entities. This rule also amends this section of the regulations to update the crop years

This rule adds a provision to section 1427.12, ''Liens,'' to allow CCC to waive lien requirements for loans having a principal value of less than $50,000. This change will make the regulations consistent with current CCC practice.

This regulation deletes from section 1427.5, in paragraphs (f)(4) and (g)(4), the requirement that a person applying for a cotton loan or LDP not have received any payment from any party with respect to the cotton. These deletions are made because the prohibition against receipt of a payment is inconsistent with CCC policies regarding beneficial interest (under which a payment may be received as long as it is not for title or control of the cotton) or receipt of loan proceeds from approved cooperative marketing associations.

This rule removes Subpart F, ''2004 Cottonseed Payment Program'' and Subpart H, ''2005 Cottonseed Payment Program,'' because the authorization for these subparts has expired.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations and administration of Title I of the 2008 Farm Bill be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866. A cost-benefit assessment of this rule is summarized below and is available from the contact listed above.

Summary of Economic Impacts

Payments made under the Economic Adjustment Assistance to Users of Upland Cotton Program will be made to domestic users of upland cotton without regard to world or domestic cotton prices. These payments may only be used for statutorily specified capital investments. It is anticipated that these payments will directly assist the domestic spinning and textile manufacturing sector in limiting further market losses, plant closures, and employment declines. For crop year 2008 through 2012, undiscounted net CCC outlays for the Economic Assistance to Users of Upland Cotton program are estimated to be $360 to 400 million (with an average undiscounted impact of approximately $76 million per crop year).

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule were considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes to the Cotton program, required by the 2008 Farm Bill that are identified in this final rule are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this final rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments, or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 1601(c)(3) of the 2008 Farm Bill requires that the Secretary use the authority in section 808 of title 5, United States Code, which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon filing for public inspection by the Office of the **Federal Register**.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs-agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

■ For the reasons discussed above, this rule amends 7 CFR part 1427 as follows:

PART 1427—COTTON

■ 1. Revise the authority for part 1427 to read as follows:

Authority: 7 U.S.C. 7231–7236; 15 U.S.C. 714b, 714c; and Pub L. 110–246.

■ 2. Amend § 1427.1 as follows:
■ a. Amend paragraphs (a) and (e) by removing the words ''2002 through 2007'' and adding, in their place, the words ''2008 through 2012'' and adding two new sentences between the first and second sentences in paragraph (a) to read as set forth below.
■ b. Amend paragraph (b), in the first sentence, by removing the word ''rates'' and adding, in its place, the word ''rate.''

§ 1427.1 Applicability.

(a) * * * Rules codified in this part which are issued after October 1, 2008, will not affect the 2007 and prior crops except that changes in the calculation of loan repayment rates that apply to the 2008 crop also apply to 2007 crop loans outstanding at the time of the changes in 2008 crop calculations. Other adjustments for the 2008 crop, such as storage rate adjustments will not apply.
* * *

§ 1427.2 [Amended]

■ 3. Amend § 1427.2 as follows:
■ a. Remove paragraph (c)(1).
■ b. Redesignate paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), respectively.
■ c. Amend paragraph (f) by removing the word ''Loan'' and adding, in its place, the word ''loan.''

■ 4. Amend § 1427.3 as follows:
■ a. In the introductory text, amend the second sentence by removing the words ''1425 and'' and adding, in their place, the words ''1423, 1425, and.''
■ b. Add new definitions, in alphabetical order, for the terms ''Classification'' and ''Loan rate'' to read as set forth below.
■ c. Amend the definition of ''Cotton storage deficit area'' by adding the words ''less carry-in stocks,'' immediately before the words ''of warehouses.''
■ d. Remove the definitions of ''Current Northern Europe shipment,'' ''Far East current price,'' ''Far East forward price,'' ''Far East price,'' ''Forward Far East shipment price,'' ''Forward northern Europe shipment,'' ''Reconcentration,'' ''U.S. Far East current price,'' ''U.S. Far East forward price,'' ''U.S. Far East price,'' ''U.S. Northern Europe current price,'' ''U.S. Northern Europe forward price,'' and ''U.S. Northern Europe price.''
■ e. Amend the definition of ''False packed cotton'' by removing the word ''indiction'' and adding, in its place, the word ''indication''.
■ f. Amend the definition of ''Loan deficiency payment'' by removing the word ''county.''
■ g. Amend the definition of ''Loan servicing agent'' by removing paragraph (3) and by redesignating paragraphs (4), (5), and (6) as (3), (4), and (5), respectively.
■ h. Revise the definition of ''Transfer'' to read as set forth below.
■ i. Amend the definition of ''Upland cotton'' by adding the word ''in'' immediately after the words ''variety of cotton.''
■ j. Revise the definition of ''Warehouse receipt'' to read as set forth below.

§ 1427.3 Definitions.

* * * * *

Base quality upland cotton means Strict Low Middling (SLM) 1 1/16 inch; leaf 4; micronaire 3.5 through 3.6 and 4.3 through 4.9; strength 25/5/ through 29.4 grams per tex; and length uniformity 79.5 through 82.4 percent.
* * * * *

Classification means the measurement results provided by the Agricultural Marketing Service (AMS) of color grade, leaf, staple, strength, extraneous matter and micronaire, and for upland cotton, length uniformity.
* * * * *

Loan rate is the national loan rate for base quality upland cotton and the national average rate for ELS cotton adjusted by any premiums and discounts determined by CCC.
* * * * *

Transfer means, depending on the context, the process for a producer or an authorized agent of the producer to:

(1) Physically relocate cotton loan collateral from one CCC-approved warehouse to another CCC-approved warehouse, (2) Exchange an electronic warehouse receipt for a receipt certificated by a warehouse for delivery under a futures contract without physically relocating the cotton, or

(3) Do both of the above.
* * * * *

Warehouse receipt means a receipt containing the required information prescribed in this part that may or may not be certificated for delivery for a futures-pricing contract, and is:

(1) For 2008-crop cotton only, a pre-numbered, pre-punched negotiable warehouse receipt issued under the authority of the U.S. Warehouse Act, a state licensing authority, or by an approved CCC warehouse in such format authorized and approved, in advance, by CCC; or

(2) For 2008 through 2012-crop cotton, an electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations that are approved by FSA to operate such system.
* * * * *

■ 5. Amend § 1427.4 paragraph (a)(1) by removing the words ''State or political subdivision or agency thereof,''.

■ 6. Amend § 1427.5 as follows:
■ a. Revise paragraph (b)(2) to read as set forth below.
■ b. Amend paragraph (b)(5) by adding the words ''and effective for the 2009 crop, not be a flat or modified flat bale;'' at the end of the paragraph.
■ c. Amend paragraph (b)(9) by adding the words ''net weight'' immediately after the words ''600 pounds.''
■ d. Amend paragraph (b)(10) removing the phrase ''of 2003 and subsequent crops.''
■ e. Amend paragraphs (b)(10) and (b)(11), introductory text, by removing

the word ''which'' each time it appears and adding, in its place, the word ''that.''

■ f. Remove paragraphs (f)(4) and (g)(4).

■ g. Redesignate paragraph (g)(5) as (g)(4).

■ h. Amend paragraph (n) by removing the word ''unlicensed'' and adding, in its place, the word ''unapproved.''

§ 1427.5 General eligibility requirements.

* * * * *

(b) * * *

(2) Be in existence and good condition and be covered by fire insurance. Bales pledged as collateral for a CCC loan, must be stored inside an approved storage warehouse unless, as determined under § 1427.10, CCC has approved the warehouse to use outside storage for cotton loan collateral for the period of the loan. Bales submitted to CCC for a loan deficiency payment are not subject to the approved storage requirements contained in § 1423.10.

* * * * *

■ 7. In § 1427.6, amend paragraphs (a), introductory text, and (a)(1) to read as follows:

§ 1427.6 Disbursement of loans.

(a) Individual producers may request loans from:

(1) FSA County Service Centers;

* * * * *

■ 8. Amend § 1427.7 by adding new paragraph (c) as follows.

§ 1427.7 Maturity of loans.

* * * * *

(c) Following written notice by CCC to the producer and warehouse operator, CCC may advance the maturity date of cotton pledged as collateral for a marketing assistance loan if:

(1) CCC determines such loan cotton collateral is improperly warehoused and subject to damage,

(2) Any term of the producer's loan agreement is violated, or

(3) Carrying charges are substantially in excess of the average of carrying charges available elsewhere and the storing warehouse, after notice, declines to reduce such charges.

■ 9. Amend § 1427.8 by adding new paragraph (e) to read as follows.

§ 1427.8 Amount of loan.

* * * * *

(e) The loan rate as determined under paragraph (a) of this section adjusted for applicable premiums and discounts will be reduced by 30 percent during each of the 2009 through 2012 crop years for producers who make an irrevocable election to receive ''Average Crop Revenue Election'' program payments as provided in § 1412 of this title or elsewhere in this title.

■ 10. Amend § 1427.9 by revising paragraphs (a), (b), (c), (e), and (f) to read as follows.

§ 1427.9 Classification of cotton.

(a) All cotton tendered for loan and loan deficiency payment must be classed by an AMS Cotton Classing Office or other entity approved by AMS.

(b) An AMS cotton classification must be based upon a representative sample drawn from the bale by samplers under AMS procedures and instructions.

(c) If the producer's cotton has not been classed or sampled in a manner acceptable by CCC, the warehouse must sample such cotton and forward the samples to the AMS Cotton Classing Office or other entity approved by AMS. Such warehouse must be licensed by AMS or be approved by CCC to draw samples for submission to the AMS Cotton Classing Office.

* * * * *

(e) Where review classification is not involved:

(1) If through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate will be based on the classification having the lower loan value;

(2) CCC will use classification information received directly from AMS rather than AMS classification information received from the producer.

(f) CCC will base any cotton loan rate or loan deficiency payment rate on the most recent classification information available before the loan or loan deficiency payment has been calculated. CCC will not adjust such rates based on review classification information submitted subsequent to the original benefit calculation.

■ 11. Amend § 1427.10 as follows:

■ a. Amend paragraphs (a), introductory text, by adding the words '', unless the producer agrees to provisions of 1427.5(n)'' immediately after the word ''CCC''

■ b. Amend paragraph (a)(1) by adding the words ''Beacon Facility-Mail Stop 8748,'' immediately after the word ''Office,''.

■ c. Amend paragraph (b) by removing the words ''by CCC'' the first time they appear.

■ d. Revise paragraph (c)(1) to read as set forth below.

■ e. Revise paragraph (c)(5) to read as set forth below.

■ f. Amend paragraph (f) by removing the words ''2003 and subsequent.''

■ g. Revise paragraph (f)(1) by removing the words ''loan collateral;'' and adding, in their place, the words ''ELS loan collateral; and.''

■ h. Revise paragraph (f)(2) by removing the semicolon and the word ''and'' at the end of the paragraph and adding a period in their place.

■ i. Remove paragraph (f)(3).

§ 1427.10 Approved Storage.

* * * * *

(c) * * *

(1) The warehouse submits a request for approval of outside storage in a format prescribed by CCC. * * *

(5) The warehouse operator provides CCC:

(i) A weekly report in a format prescribed by CCC identifying individual bales of cotton pledged as collateral for a CCC loan that are stored outside, and

(ii) Through their electronic warehouse receipt provider, on a current basis, location indicators and effective dates for any loan bale stored outside.

* * * * *

■ 12. Amend § 1427.11 as follows:

■ a. Revise paragraph (c) to read as set forth below.

■ b. Amend paragraph (e) by removing the second and third sentences.

■ c. Remove paragraph (f).

■ d. Redesignate paragraph (g) as paragraph (f).

§ 1427.11 Warehouse receipts.

* * * * *

(c)(1) Each receipt must set out in its terms the tare and the net weight of the bale represented by the receipt. The net weight shown on the warehouse receipt must be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if gin weights are permitted by the licensing authority for the warehouse.

(2) The tare weight shown on the receipt must be the tare weight furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A machine card type warehouse receipt reflecting an alteration in gross, tare weight, or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (gross, tare, or net) weight,

(Name of warehouse),

By (Signature or initials),

Date.

* * * * *

§ 1427.12 [Amended]

■ 13. In § 1427.12, amend paragraph (a) by adding the words ‘‘, except that CCC may elect to waive such lien requirements for loans having a principal value of less than $50,000’’ at the end of the paragraph.

■ 14. Amend § 1427.13 as follows:

■ a. Revise paragraph (e)(3) to read as set forth below.

■ b. Add a new paragraph (e)(4) to read as set forth below.

§ 1427.13 Fees, charges and interest.

* * * * *

(e)(3) Any warehouse storage charges associated with the forfeited cotton that accrued during the period of the loan and paid by CCC to the warehouse that:

(i) Exceed CCC’s maximum storage credit rate for the warehouse established in § 1427.19 and

(ii) Were paid by CCC for periods subject to denied storage credits due to the cotton being stored outside as specified in § 1427.19(h)(2)(ii).

(4) Unpaid warehouse compression charges.

■ 15. Amend § 1427.16 as follows:

■ a. Remove paragraphs (b), (d), and (e).

■ b. Redesignate paragraph (c) as paragraph (b) and revise newly designated paragraph (b) to read as set forth below.

■ c. Redesignate paragraph (f) as paragraph (c) and redesignate former paragraphs (f)(3) through (f)(5) as paragraphs (c)(2)(i) through (c)(2)(iii), respectively.

■ d. Revise newly designated paragraph (c) to read as set forth below.

§ 1427.16 Movement and protection of warehouse-stored cotton.

* * * * *

(b) A producer may transfer cotton loan collateral subject to the following conditions:

(1) The cotton is represented by an electronic warehouse receipt;

(2) The request is submitted by a producer or a properly designated agent of the producer;

(3) The transfer is agreed to by the receiving warehouse operator;

(4) The CCC marketing assistance loan that is secured by such cotton matures at least 30 days after the date on which the request for the transfer is submitted to CCC; and

(5) Any charges, fees, costs, or expenses incident to the transfer of cotton loan collateral under this paragraph must be paid by the requestor of the transfer.

(c) CCC will exclude from the calculation of any storage credits payable under § 1427.19 the following periods:

(1) The period during which the cotton is in transit between warehouses; and

(2) Any period beyond 75 days starting from the date of transfer from the shipping warehouse, unless the shipping warehouse is:

(i) Not in compliance with any of the terms of its Cotton Storage Agreement,

(ii) Storing cotton loan collateral outside, or

(iii) Under common ownership with the receiving warehouse.

§ 1427.17 [Removed and Reserved]

■ 16. Remove and reserve § 1427.17.

■ 17. Amend § 1427.18 as follows:

■ a. Revise paragraph (a)(2) to read as set forth below.

■ b. Amend paragraph (h)(2)(i) by removing the words ‘‘If the marketing assistance loan is called’’ and adding in their place the words ‘‘If CCC accelerates the maturity date for a loan.’’

■ c. Amend paragraphs (k)(1) and (k)(2) by removing the reference ‘‘§ 1427.10(e)’’ and adding, in its place each time it appears, the reference ‘‘§ 1427.10(f).’’

§ 1427.18 Liability of the producer.

(a) * * *

(2) If a producer makes a fraudulent representation or if the producer has disposed of, or moved the loan collateral without prior written approval from CCC, the value of such collateral will be equal to its loan value, plus accrued interest, plus warehouse charges, and liquidated damages, as determined by CCC.

* * * * *

■ 18. Amend § 1427.19 as follows:

■ a. Amend paragraph (a) by adding the words ‘‘pledged as collateral for a CCC loan’’ after the word ‘‘receipts.’’

■ b. Revise paragraphs (h), (i), and (j) to read as set forth below.

■ c. Add paragraph (k) to read as set forth below.

§ 1427.19 Repayment of loans.

* * * * *

(h) For purposes of calculating loan-period accrued storage charges that CCC may credit to the loan repayment amount under paragraph (i) of this section:

(1) The warehouse storage rates to be used for the 2008 through 2011 crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California $3.93 per bale per month and for warehouses located in all States other than Arizona and California $2.39 per bale per month.

(2) The warehouse storage rates to be used for the 2012 and subsequent crops will be the lower of:

(i) The tariff storage rate for the warehouse for the 2005 crop or, for any warehouse not in existence in 2005, a CCC-assigned average 2005 crop tariff rate for the county or area; or

(ii) For warehouses located in Arizona and California $3.50 per bale per month and for warehouses located in all States other than Arizona and California $2.13 per bale per month.

(3) CCC will not credit the loan repayment amount for a bale for any storage charges that accrued while the cotton was stored outside, except that storage may be credited for up to 15-days of outside storage beginning on the day the warehouse was notified that the bale is under loan if the bale was inside on the 15th day from the date of notification.

(4) The loan period will be determined by CCC to begin:

(i) For loan disbursed by the Farm Service Agency, on the date all loan documents, as determined and announced by CCC, have been received or

(ii) For a loan disbursed by a Cooperative Marketing Association or an authorized loan servicing agent, on the date the loan was disbursed by CCC.

(i)(1) An upland cotton loan repayment rate will not exceed the loan principal plus accrued interest for the period provided in § 1427.19(j).

(2) When the prevailing adjusted world price of upland cotton, as determined under § 1427.25, is less than the combined value of the loan principal, accrued interest, and warehouse storage that accrued during the period of the loan, CCC will permit the loan to be repaid at the adjusted world price less the storage charges that accrued during the period of the loan.

(j) For purposes of calculating interest charges on upland and extra long staple cotton loan principal, the loan period will be the period starting the date after the disbursement of the loan amount to, and including, the loan repayment date, except that interest is not charged for a loan that is disbursed and repaid on the same date.

(k) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

■ 19. Amend § 1427.21 as follows:

■ a. Revise paragraphs (a) and (b) to read as set forth below.

■ b. Amend paragraph (d) by removing the reference ‘‘§ 1427.10(e)’’ and adding, in its place, the reference ‘‘§ 1427.10(f).’’

■ c. Add paragraph (f) to read as set forth below.

§ 1427.21 Settlement.

(a) The settlement of cotton loans will be made by CCC on the basis of the quality and quantity of the cotton delivered to CCC by the producer or acquired by CCC subject to the producer being responsible for, if applicable, warehouse receiving charges, new bale ties, unpaid warehouse compression, charges for and related to the certification of a bale and for any subsequent exchange of certificated receipts, storage charges for any period of yard storage, and storage charges in excess of any maximum storage credit rates as determined and announced by CCC.

(b) For purposes of settlements for cotton delivered to CCC in satisfaction of a loan obligation, CCC may elect to calculate such settlement values based on the net weight, condition, and classification as reflected on the warehouse receipt delivered to CCC, whether such receipt is the receipt issued by the original storing warehouse and presented for calculating the loan amount or a receipt issued by a subsequent warehouse due to the transfer of such bale while pledged as collateral for a CCC loan.

* * * * *

(f) CCC will pay to the warehouse any unpaid storage or receiving charges for forfeited loan collateral, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the loan maturity date, as soon as practicable after the cotton is forfeited.

■ 20. Amend § 1427.22 to revise paragraph (a) to read as follows.

§ 1427.22 Commodity certificate exchanges.

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral. This provision terminates effective ending with the 2009 crop and will not be available for subsequent crops.

* * * * *

■ 21. Amend § 1427.23 as follows:

■ a. Revise paragraphs (a)(3) and (e)(1) to read as set forth below.

■ b. Amend paragraph (f) by removing the word ''Standard.''

■ c. Remove paragraph (g).

§ 1427.23 Cotton loan deficiency payments.

(a) * * *

(3) Submit, on a form prescribed by CCC, to the FSA Service Center on or before beneficial interest is lost in such quantity and before the final loan availability date for the commodity:

(i) An indication of their intentions to receive a loan deficiency payment on the identified commodity or

(ii) A completed request for a loan deficiency payment for a quantity of eligible cotton under § 1427.5(a).

* * * * *

(e) * * *

(1) Based on the date the cotton was ginned, which CCC will consider to be the date of the LDP request, if payment application is made in the manner prescribed by CCC for obtaining such rate;

* * * * *

■ 22. Revise § 1427.25 to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

(a) CCC will determine the world market price for upland cotton as follows:

(1) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32-inch) cotton, CFR (cost and freight) Far East, the prevailing world market price for upland cotton will be based on the average of the quotations for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32-inch cotton, CFR Far East.

(2) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current Far East shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward Far East shipment price) are available for growths quoted for M 1 3/32-inch cotton, CFR Far East, the prevailing world market price for upland cotton will be based on the average of the current Far East shipment prices for the preceding Friday through Thursday for the 5 lowest-priced growths of the growths quoted for M 1 3/32-inch cotton, CFR Far East, except as may be determined by the Secretary as specified in paragraph (c)(3)(iv) of this section.

(3) The upland cotton prevailing world market price determined as specified in paragraphs (a)(1) or (a)(2) of this section is referred to as the ''Far East price'' (FE).

(4) If quotes are not available for 1 or more days in the 5-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price will be based on the best available world price information, as CCC determines.

(b) The upland cotton prevailing world market price, adjusted as specified in paragraph (c) of this section (adjusted world price (AWP)), will apply to the 2008 through 2012 crops of upland cotton and to the 2007 crop to the extent provided in § 1427.1.

(c) The upland cotton AWP will equal the FE determined as specified in paragraph (a) of this section, adjusted as follows:

(1) FE will be adjusted to U.S. location by deducting the average costs to market, including average transportation costs, as determined by the Secretary.

(2) The price determined as specified in paragraph (c)(1) of this section will be adjusted to reflect the price of base quality upland cotton by deducting the difference, as CCC announces, between the applicable loan rate for an upland cotton crop for M 1 3/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for base quality upland cotton.

(3) The prevailing world market price, adjusted as specified in paragraphs (c)(1) and (c)(2) of this section, may be further adjusted if it is determined that the adjustment is necessary to:

(i) Minimize potential loan forfeitures;

(ii) Minimize the accumulation of stocks of upland cotton by the Federal Government;

(iii) Ensure that upland cotton produced in the United States can be marketed freely and competitively, both domestically and internationally; and

(iv) Ensure an appropriate transition between current-crop and forward-crop price quotations, except that forward-crop price quotations may be used prior to July 31 of a marketing year only if there are insufficient current crop quotations and the forward-crop price quotation is the lowest such quotation available.

(d) The upland cotton AWP, determined as specified in paragraph (c) of this section, and the amount of the additional adjustment determined as specified in paragraphs (e) and (f) of this section, will be announced, to the extent practicable, at 4 p.m. eastern time each Thursday continuing through the last Thursday of March 2014 (March 27, 2014). In the event that Thursday is a non-workday, the determination will be

announced, to the extent practicable, at 8 a.m. eastern time the next work day.

(e)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further coarse count adjustment as provided in this section regarding all qualities of upland cotton eligible for loan except the following upland cotton grades with a staple length of 1 1/16-inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5;

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2; and

(ii) Grade, leaf, and staple length must be determined as specified in § 1427.9. If no such official classification is presented, the coarse count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (e)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ''coarse count'' cotton, CFR Far East, is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton, CFR Far East (Far East coarse count price); or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for ''coarse count'' cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''coarse count'' cotton, CFR Far East (Far East coarse count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M 13/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 80 through 82 percent) cotton and the loan rate for an upland cotton crop for SLM 1 1/32-inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East coarse count price specified in paragraph (e)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (e)(2) of this section for the latest available week will continue to be applicable.

(f)(1)(i) AWP, determined as specified in paragraph (c) of this section, will be subject to a further fine count adjustment as provided in this section regarding all upland cotton having a loan schedule premium or discount exceeding that for Middling, leaf 3, staple length 1 13/32-inch upland cotton, and

(ii) Grade, staple length, and leaf must be determined as specified in § 1427.9. If no such official classification is presented, the fine count adjustment will not be made.

(2) The adjustment for upland cotton specified in paragraph (f)(1) of this section will be determined by deducting from AWP:

(i) The difference between FE, and

(A) During the period when only one daily price quotation for each growth quoted for ''fine count'' cotton, CFR Far East, is available the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''fine count'' cotton, CFR Far East (Far East fine count price) or

(B) During the period when both current Far East shipment prices and forward Far East shipment prices are available for the growths quoted for ''fine count'' cotton, CFR Far East, the result calculated by the average of the current Far East shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for ''fine count'' cotton, CFR Far East (Far East fine count price) minus

(ii) The difference between the applicable loan rate for an upland cotton crop for M 13/32-inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton and the loan rate for an upland cotton crop for SM 1 1/8-inch, leaf 2, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 25.5 through 29.4 grams per tex, length uniformity 79.5 through 82.4 percent) cotton.

(3) Regarding the determination of the Far East fine count price under paragraph (f)(2)(i) of this section:

(i) If no quotes are available for one or more days of the 5-day period, the available quotes will be used;

(ii) If quotes for three growths are not available for any day in the 5-day period, that day will not be considered; and

(iii) If quotes for three growths are not available for at least 3 days in the 5-day period, that week will not be considered, in which case the adjustment determined as specified in paragraph (f)(2) of this section for the latest available week will continue to be applicable.

(g) In the determination of FE as specified in paragraph (a)(2) of this section, the Far East coarse count price specified in paragraph (e)(2)(i)(B) of this section, and the Far East fine count price as specified in paragraph (f)(2)(i)(B) of this section, CCC will use either current Far East shipment prices, forward Far East shipment prices, or any combination thereof to determine FE or the Far East coarse count price or the Far East fine count price used in the determination of the adjustment for upland cotton specified in paragraphs (e)(1) and (f)(1) of this section and determined as specified in paragraphs (e)(2) and (f)(2) of this section to prevent distortions in such adjustment.

(h) For particular bales, the AWP determined as specified in paragraph (c) of this section, will be subject to further adjustments to a value no less than zero, as CCC determines, based on the Schedule of Premiums and Discounts as announced for the loan program for an upland cotton crop.

■ 23. Revise Subpart C to read as follows.

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

§ 1427.100 Applicability.
§ 1427.101 Eligible upland cotton.
§ 1427.102 Eligible domestic users.
§ 1427.103 Upland cotton Domestic User Agreement.
§ 1427.104 Payment rate.
§ 1427.105 Payment.

Subpart C—Economic Adjustment Assistance to Users of Upland Cotton

§ 1427.100 Applicability.

(a) Regulations in this subpart are applicable beginning August 1, 2008. These regulations specify the terms and conditions under which CCC will make payments to eligible domestic users who entered into an Upland Cotton Domestic User Agreement with CCC to participate in the upland cotton domestic user

program under section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to commonly as the ''2008 Farm Bill'').

(b) CCC will prescribe forms used in administering Economic Adjustment Assistance to Users of Upland Cotton.

§ 1427.101 Eligible upland cotton.

(a) For purposes of this subpart, eligible upland cotton is baled upland cotton, regardless of origin, that is opened by an eligible domestic user on or after August 1, 2008, and is either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose samples removed from upland cotton bales for classification purposes that have been rebaled;

(3) Semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking, or production of non-woven fabric; or

(4) Re-ginned (processed) motes.

(b) Eligible upland cotton must not be:

(1) Cotton for which a payment, under the provisions of this subpart, has been made available;

(2) Raw (unprocessed) motes, pills, linters, or other derivatives of the lint cleaning process; or

(3) Textile mill wastes.

§ 1427.102 Eligible domestic users.

(a) For purposes of this subpart, a person regularly engaged in the business of opening bales of eligible upland cotton for the purpose of spinning, papermaking, or processing of non-woven cotton fabric in the United States, who has entered into an agreement with CCC to participate in the upland cotton user program, will be considered an eligible domestic user.

(b) Applications for payment under this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User Agreement and other instructions that CCC issues.

§ 1427.103 Upland cotton Domestic User Agreement.

(a) Payments specified in this subpart will be made available to eligible domestic users who have entered into an Upland Cotton Domestic User Agreement with CCC and who have complied with the terms and conditions in this subpart, the Upland Cotton Domestic User Agreement, and instructions issued by CCC.

(b) Upland Cotton Domestic User Agreements may be obtained from Contract Reconciliation Division, Kansas City Commodity Office (KCCO), P.O. Box 419205, Stop 8758, Kansas City, Missouri 64141–6205. In order to participate in the program authorized by this subpart, domestic users must execute the Upland Cotton Domestic User Agreement and forward the original and one copy to KCCO.

§ 1427.104 Payment rate.

(a) Beginning August 1, 2008 and ending July 31, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 4 cents per pound.

(b) Beginning August 1, 2012, the payment rate for purposes of calculating payments as specified in this subpart will be 3 cents per pound.

§ 1427.105 Payment.

(a) Payments specified in this subpart will be determined by multiplying:

(1) The payment rate, determined as specified in § 1427.104, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in paragraph (b) of this section, of eligible upland cotton bales an eligible domestic user opens during the immediately preceding calendar month.

(b) For the purposes of this subpart, the net weight will be determined based on the net weight of the cotton used, but not to exceed the last available certified weight;

(c) For the purposes of this subpart, eligible upland cotton will be considered consumed by the domestic user on the date the bale is opened for consumption.

(d) Payments specified in this subpart will be made available upon application for payment and submission of supporting documentation, as required by the CCC-issued provisions of the Upland Cotton Domestic User Agreement.

(e) All payments received by the agreement holder must be used for purposes as specified in section 1207 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, referred to commonly as the 2008 Farm Bill). Authorized expenditures include acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery. Such capital expenditures must be directly attributable and certified as such by the user for the purpose of manufacturing upland cotton into eligible cotton products in the United States.

■ 24. Amend § 1427.160 as follows:

■ a. Amend paragraph (a) by removing the words ''2002 through 2007'' and adding, in their place, ''2008 through 2012.''

■ b. Revise paragraph (b) to read as set forth below.

■ c. Amend paragraph (c) by removing the second sentence.

§ 1427.160 Applicability.

* * * * *

(b) Loan rates and the forms that are used in administering the recourse seed cotton loan program for a crop of cotton are available in FSA State and county offices. Loan rates will be based on the base quality loan rate for upland cotton and the national average loan rate for extra long staple cotton.

* * * * *

Subpart F—[Removed and Reserved]

■ 25. Remove and reserve Subpart F.

■ 26. Amend § 1427.1203 as follows:

■ a. Amend paragraphs (a)(1) and (a)(2) by removing the date ''October 1, 1999'' and adding, in its place, the date ''June 18, 2008.''

Subpart H—[Removed]

■ 27. Remove Subpart H.

Signed at Washington, DC, on October 30, 2008.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–26343 Filed 10–31–08; 4:15 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AC13

General Policies, Types of Loans, Loan Requirements—Telecommunications

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, amends its regulations for the Telecommunications Loan Program (Loan Program). The Agency has reviewed its criteria for approving loans and has determined that modifications to the Loan Program regulations are required in order to ensure that some financially sound applicants are not excluded from the Loan Program.

The Agency is proposing to amend its regulations to modify the Times Interest Earned Ratio (TIER) requirements that

an applicant must comply with when receiving a loan. This direct final rule is part of an ongoing Agency project to update Agency policies to enable borrowers to provide reliable, modern telecommunications service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: This rule is effective December 22, 2008, without further action, unless the Agency receives adverse comments or, submits in writing intent to submit an adverse comment, by December 5, 2008. Written adverse comments or, intent to submit an adverse comment, must be received by Rural Development or carry a postmark or equivalent no later that December 5, 2008. If adverse comments are received, the Agency will publish a timely **Federal Register** document withdrawing this rule.

ADDRESSES: Submit adverse comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and in the ''Search Documents'' box, enter RUS–08–Telecom–0002, and select GO>>. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250–1522. Please state that your adverse comment refers to Docket No. RUS–08–Telecom–0002.
- *Other Information:* Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Jerry H. Brent, Director, Northern Division, Telecommunications Program, USDA Rural Development, STOP 1595, 1400 Independence Avenue, SW., Washington, DC 20250–1595, Telephone (202)720–1025, Facsimile (202) 690–4654. *E-mail address: jerry.brent@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This direct final rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) Program number assigned to the Rural Development Utilities Telecommunications Loans and Loan Guarantees Program is 10.851. The CFDA is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325; telephone (202) 512–1800.

Executive Order 12372

This program is not subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with Sec 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

The policies contained in this direct final rule do not have any substantial direct effect on 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. Nor does this direct final rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an opportunity for public comment. Because this final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Unfunded Mandates

This direct final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Therefore, this direct final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Environmental Impact Statement

This direct final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Information Collection and Recordkeeping Requirements

This direct rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Background

Overview

Rural Development improves the quality of life in rural America by providing investment capital, in the form of loans and grants, for the deployment of rural telecommunications infrastructure. Financial assistance is provided to rural utilities; municipalities; commercial corporations; limited liability companies; public utility districts; Indian tribes; and cooperative, nonprofit, limited-dividend, or mutual associations. In order to achieve the goal of increasing economic opportunity in rural America, the Agency finances infrastructure that enables access to a seamless, nationwide telecommunications network. With access to the same advanced telecommunications networks of its urban counterparts, especially broadband networks designed to accommodate distance learning, telework and telemedicine, rural America will see improving educational opportunities, health care, economies, safety and security, and ultimately higher employment. The Agency is

committed to ensuring that rural areas will have access to affordable, reliable, advanced telecommunications services, comparable to those available throughout the rest of the United States, to provide a healthy, safe and prosperous place to live and work.

While the Agency is proud of the results it has achieved in Rural America with the Telecommunications Loan Program, it believes that the overall effectiveness of the program can be improved by modifying the existing rules. The change to the current regulation will permit additional financially sound borrowers, who clearly meet the intent of the Telecommunications Loan Program, to be eligible to participate in the program.

Discussion of Changes

Facilities financed by the Loan Program are typically constructed over a five year period (Forecast Period). The feasibility studies used to demonstrate that an applicant is eligible for a loan and can repay it assumes this Forecast Period. The feasibility study is also used to forecast the applicant's Times Interest Earned Ratio or TIER. The TIER is one measure of an applicant's ability to repay the loan. Currently, the regulation states that applicants must maintain a TIER of at least 1.0 during the Forecast Period. At the end of the Forecast Period, the applicant shall be required to maintain, at a minimum, a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but at least 1.0 and not greater than 1.5.

The requirement that an applicant maintain a TIER of at least 1.0 during the Forecast Period, arbitrarily and unfairly disqualifies some applicants from the Loan Program. During the Forecast Period as an applicant constructs facilities, there is always a delay from the time that the construction is initiated to the time that construction is completed and revenues increase based upon the new subscribers connected and new services offered. During this period, it would not be unusual for the applicant's TIER to be less than 1.0. This occurrence is not generally an indicator that the applicant is in financial difficulty, but a direct result of the time lag associated with construction of facilities. In addition, the current provision effectively disqualifies any start up or new entity from qualifying for the Loan Program. In many cases these newer entities, and the rural residents they serve, are the ones that stand to benefit the greatest from the program.

This change would not constitute a loan security risk as an applicant's financial performance is continuously monitored and the advance of loan funds can be suspended should the situation warrant such action. In addition, the applicant would still be required to maintain the projected TIER at the end of the Forecast Period.

List of Subjects in 7 CFR 1735

Loan programs—communications, Rural Areas, Telecommunications and Telephone.

■ For reasons set forth in the preamble, the Agency amends Chapter XVII of title 7 of the Code of Federal Regulations by revising part 1735 as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

■ 1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.*, and 6941 *et seq.*

■ 2. In § 1735.22, paragraph (g) is revised to read as follows:

§ 1735.22 Loan Security.

Subpart B—Loan Purposes

* * * * *

(g) For Loans approved after December 22, 2008, the borrower shall be required to maintain a TIER, at the end of the Forecast Period, at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, which shall be at least 1.0 and not greater than 1.5.

* * * * *

Dated: September 8, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26318 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AM77

Board of Veterans' Appeals: Expedited Claims Adjudication Initiative—Pilot Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is launching an initiative for accelerated claims and appeals processing at four VA facilities, based on voluntary participation by eligible claimants. The purpose of this initiative is to determine whether VA can expedite the processing of claims and appeals by obtaining claimants' waivers of certain statutory and regulatory response periods, and by utilizing the Board of Veterans' Appeals' (Board or BVA) statutory authority to pre-screen cases. VA's responsibility to fully develop and decide cases in a fair, accurate, and non-adversarial manner remains unchanged under this initiative. If this initiative is successful at the four trial sites, the data obtained may provide a basis for expanding some, or all, of the program nationwide, and ultimately help accelerate the processing of all claims and appeals. The parameters of the initiative are set forth in these regulations.

DATES: *Effective Date:* The final rule is effective December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Principal Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–8078. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 16, 2008 (73 FR 20571), VA proposed to launch an initiative for accelerated claims and appeals processing at four VA facilities. This initiative would establish a 2-year pilot program known as the Expedited Claims Adjudication (ECA) Initiative (Initiative). The goal of the Initiative would be to determine whether VA can expedite the claims and appeals process by obtaining claimants' waivers of certain statutory and regulatory response periods, and by pre-screening cases at the Board to determine the adequacy of the record for appellate review. As proposed, participation in the Initiative would be strictly voluntary, and open to claimants residing in the jurisdiction of one of the four trial sites. Additionally, claimants would be required to be represented by a recognized Veterans Service Organization (VSO) or an accredited agent or attorney at the time of electing to participate in the Initiative. The ECA Initiative would be predicated on the claimant agreeing, at the beginning of the claims process, to waive certain identified statutory and regulatory time limits and processing actions, which would be carefully outlined in an ECA Initiative Agreement and Waiver of Rights (ECA Agreement). ECA participation would be effectuated only if *both* the claimant and his or her representative sign the ECA Agreement, certifying that the claimant has consulted with his or her representative

to determine if participation in the Initiative is in his or her best interest.

A claimant's decision to participate in the ECA would be revocable at any time in the VA claims or appeals process, with no penalty. Rather, as outlined in the notice of proposed rulemaking, upon express or implied revocation of ECA participation, the claimant's case would continue to be processed, from that point forward, using ordinary and established procedures under current statutes and regulations governing claims adjudication. In other words, the claimant's case would essentially continue from the same point in the adjudication process that it was when it left the ECA.

The public comment period ended on June 16, 2008. VA received comments from one individual and from three organizations. For the most part, the comments expressed general disagreement with the basic structure and purpose of the ECA, and raised concerns about the impact the ECA would have on VA's workload, particularly accuracy and quality in decision-making. More specifically, the commenters expressed the following concerns: (1) The effect of the Initiative on decision quality; (2) whether the Board has authority to decide ECA claims out of docket order; (3) time limits under the Initiative; (4) disagreement with the good cause exception in the Initiative; (5) VA's data collection under the Initiative; (6) a challenge to the purpose of the ECA; and, (7) concern over the impact of the ECA on the workload at one of the trial sites. We will address each of these topics in turn. Based on the rationale described in this document and in the notice of proposed rulemaking, VA adopts the proposed rule as revised in this document.

A. Decision Quality

An underlying theme throughout the four comments was that the ECA would degrade decision quality and accuracy. One commenter stated that the Initiative ''appears to elevate speed of adjudication above adequate evidence development and accuracy of decision-making.'' The commenter stated that the Initiative ''does violence'' to the historical non-adversarial and informal nature of the VA adjudication system. The commenter stated the belief that the Initiative would not lead to any improvement to the adjudication system as a whole. Rather, the commenter is ''convinced that the changes the Initiative proposes will cause the creation of inadequately developed records in claims, which will result in inaccurate decisions denying benefits'' and ultimately lead to increased remands in the system to ''undertake corrective development in covered claims.''

Similarly, another commenter expressed hesitancy to support the ECA ''without a guarantee that the quality of the decision rendered will be better than that of a claim adjudicated in the normal manner or that there would be a significant improvement in claims processing time.'' The commenter noted the absence of a quality assurance component for the ECA. The commenter recommended ''that VA devote its time to improving the quality of its adjudications rather than creating ways to circumvent procedural protections.''

We agree that all claimants in the VA adjudication system are entitled to accurate and legally correct decisions based on a fully-developed evidentiary record. We respectfully disagree, however, with the commenters' characterization of the Initiative as promoting speed of adjudication over adequate evidentiary development and administrative efficiency over accuracy. We also disagree with the suggestion that the Initiative would do ''violence'' to the current system. Rather, we believe that this Initiative is a constructive attempt to improve efficiency and timeliness in the VA claims adjudication system.

As discussed in the notice of proposed rulemaking, the essential premise on which the Initiative is based is that there are many procedural rights built into the current VA claims adjudication and appeals process that unnecessarily lengthen the amount of time it takes to process an initial claim or appeal while cases sit without any action occurring while waiting for a statutory or regulatory response period to end. By greatly reducing the amount of time that a case sits without any action occurring while waiting for one of these response periods to run, it is the goal of this 2-year Initiative to provide a model to streamline the claims adjudication and appeals process system wide. Contrarily, it is not the goal of the Initiative to avoid VA's responsibilities to fully and adequately develop and decide cases in a fair and accurate manner, or to change in any other manner the non-adversarial and informal nature of the VA adjudication system.

With respect to evidentiary development, we emphasize that the Initiative leaves intact VA's duty to notify claimants of the information and evidence necessary to substantiate their claims under 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1), as well as VA's duty to assist claimants in obtaining evidence necessary to substantiate their claims under 38 U.S.C. 5103A and 38 CFR 3.159(c). ECA participants will continue to be provided a notice letter that informs them of the information and evidence needed to substantiate their claim(s) and outlines the claimant's and VA's responsibilities for obtaining such evidence. *See* 38 U.S.C. 5103(a) and 38 CFR 3.159(b)(1). The Initiative also leaves unaltered VA's duty to make reasonable efforts to obtain relevant evidence identified by a claimant, and leaves unchanged VA's duty to provide claimants with a medical examination or obtain a medical opinion when necessary to decide a claim. *See, e.g.*, 38 CFR 3.159(c)(4), 3.326, 3.327. These notice and development requirements are implicitly referenced under § 20.1500(c), which states that any matter not otherwise covered by this subpart will be governed by existing rules.

As the Initiative leaves intact VA's duties to notify and assist, we cannot agree with the commenters' suggestion that the Initiative contains no provision that would ensure that VA adjudicators have a complete and fully developed evidentiary record in covered claims. To the contrary, VA's obligation to adequately develop claims under the Veterans Claims Assistance Act of 2000 (VCAA), *see* 38 U.S.C. 5103 and 5103A, applies to both ECA participants and non-ECA participants alike. Under the ECA Initiative, VA's responsibilities with respect to both obtaining and analyzing identified evidence remain unchanged. Thus, ECA participants run no additional risk of inadequate evidentiary development as compared to other claimants in the VA system.

We also do not agree with the suggestion that the Initiative sacrifices accuracy for speed. It remains VA's goal to provide all claimants, including ECA participants, with high-quality, legally-correct decisions in all claims. No provision in the ECA Initiative runs counter to this goal. Although the Initiative shortens various statutory and regulatory response times to be observed by participants, it does not diminish VA's duty to fully develop the record as mandated by the VCAA, and accurately decide a claim taking into consideration all relevant facts and applicable law. While one of the commenters is correct that quality assurance is not specifically addressed in the proposed regulations, it is not necessary to include such regulations as both the Veterans Benefits Administration (VBA) and the Board already have robust and established quality assurance programs in place that will be equally applicable to ECA cases. Therefore, for the above reasons, we

make no change to the proposed rule based on the concerns raised regarding decision quality and record development.

B. Docket Order

One commenter expressed concern that the Initiative makes no provision for the Board to issue expedited decisions in appeals of covered claims. The commenter suggested that VA adopt a regulation authorizing the Board to ''consider and decide covered claims of participating claimants out of docket order and as soon as practicable upon their transfer to the Board.'' Unless the Board adopts such a provision, the commenter stated, the Initiative will not be successful as claimants will not want to participate in a program that does not ensure faster processing time by the Board. The commenter recognized that, as we explained in the notice of proposed rulemaking, the Board is required by statute to consider appeals in docket order, subject to certain enumerated exceptions. *See* 38 U.S.C. 7107(a) (providing that ''each case received pursuant to an application for review on appeal shall be considered and decided in regular order according to its place on the docket''). The commenter presented two recommendations for the Board to deal with this statutory requirement. First, the commenter proposed that ''VA must ask Congress to enact legislation to authorize the Board to issue expedited decisions in appeals of covered claims.'' Second, the commenter suggested that the Board, pursuant to either 38 U.S.C. 7107 or 38 U.S.C. 501(a), may already have authority to decide ECA appeals out of docket order.

With respect to the commenter's suggestion that VA ask Congress to enact legislation authorizing the Board to decide ECA appeals out of docket order, it was our goal in creating the Initiative to work within the existing statutory framework. While there may be a number of suggested legislative amendments which, if enacted, could potentially improve the VA claims adjudication system, such pursuits are not within the ambit of this rulemaking action or the ECA Initiative. Therefore, we make no changes to the proposed rule based on this suggestion.

We also respectfully disagree with the commenter's suggestion that VA already has the authority to decide ECA cases out of docket order. The commenter specifically argues that ECA cases could be advanced on the Board's docket pursuant to 38 U.S.C. 7107(a)(2). That statutory provision allows the Board to advance a case on its docket ''if the case involves interpretation of law of general application affecting other claims;'' ''if the appellant is seriously ill or is under severe financial hardship;'' or ''for other sufficient cause shown.'' The commenter suggests that the need for expeditious adjudication of ECA appeals constitutes ''other sufficient cause'' for allowing the Board to advance ECA cases on its docket.

We do not agree with the commenter that the need for expeditious adjudication of appeals under the Initiative constitutes ''other sufficient cause'' for advancing ECA cases on the docket, as that phrase is used in 38 U.S.C. 7107(a)(2)(C). Consistent with the limited bases for granting a motion to advance as provided in section 7107(a)(2), the Board has narrowly construed ''other sufficient cause'' as being limited to situations involving either administrative error on the part of VA that resulted in significant delay in docketing the case, or where the appellant is of advanced age (75 or older). *See* 38 CFR 20.900(c).

Any appeal that is advanced on the Board's docket ''goes to the head of the line'' and necessarily delays the consideration of all other pending appeals. For every case advanced on the Board's docket, another appellant whose case has not been advanced must wait longer for his or her decision than otherwise would have been necessary. Decisions to grant motions for advancement on the docket are carefully considered on their individual merits. Although it is important that ECA appeals are decided as quickly as possible, we simply do not believe that the policy concerns inherent in advancing ECA cases are tantamount to those involved in cases where advancement has traditionally been allowed. The ECA Initiative is a 2-year pilot program, which, if successful, may provide a basis for expanding some, or all, of the program nationwide. If and when that occurs, it may be appropriate to reconsider the issue of what would be required to properly permit the advance docketing of ECA appeals. In the meantime, although ECA cases will not be automatically advanced on the Board's docket, nothing in the Initiative precludes participants from filing motions for advancement on the docket where such action is otherwise warranted under 38 U.S.C. 7107(a)(2) and 38 CFR 20.900(c), such as where an appellant is at least 75 years of age or suffers from serious illness or severe financial hardship.

Finally, while ECA cases will not be automatically advanced on the Board's docket, it still is anticipated that the Board's use of its screening authority under 38 U.S.C. 7107(f) will result in cases being finally decided by the Board in a faster manner. Once an appeal reaches its place on the docket, the Board often discovers that additional development is required or that questions remain regarding representation, hearing requests, or waivers of Board review of evidence in the first instance. Substantial delay can result while the Board resolves such matters, particularly where the Board has to remand for additional development. Such delays can often add months or years to the appellate process. By screening ECA cases at the Board under 38 U.S.C. 7107(f), the Board is authorized to take action pursuant to 38 CFR 19.9 including: soliciting a waiver from the participant permitting the Board to review new evidence obtained by VA in the first instance; seeking clarification on matters such as representation and hearing requests; and, where necessary, remanding for further development. The Board's screening efforts in this regard will help to ensure that such matters are resolved *before* an ECA appeal reaches its place on the docket. Thus, when an appeal reaches its place on the docket, the Board should be able to make a final decision on the merits without additional delay, such as would be caused by remanding for further development at that time.

As to the concern raised that claimants will not want to participate in the ECA program unless the Board adopts a provision for advancing such cases on its docket, we simply reiterate that, by pre-screening appeals, cases should be finally decided by the Board more expeditiously than without such early intervention. Moreover, it is noted that, based on longstanding past practice, a majority of cases are resolved before they reach the Board. Most cases processed under the ECA will likewise be resolved at the Agency of Original Jurisdiction (AOJ) level. For those cases that do reach the Board, an earlier docket number will be assigned by virtue of the case having been more quickly processed by the AOJ. For all of the reasons outlined above, we make no change to the proposed rules based on the comments regarding docket order.

C. Time Limits

1. Time Limits on VA

One commenter expressed concern that under the Initiative, ''participating claimants agree to act within certain time-limits, while the VA, except for one instance, does not.'' The commenter stated that, if one of the goals of the Initiative is to ''help accelerate the processing of all claims and appeals,''

VA will help to achieve this goal if it imposes additional time limits on itself under the Initiative. The commenter submits that ''VA must impose time-limits on the four selected VA regional offices and the Board to take necessary action,'' and several specific time limits were suggested. We reject this comment for the following reasons.

While the Initiative places only one time limit on VA, *see* 38 CFR 20.1504(b), this was done to ensure that VA adjudicators are afforded adequate time to gather evidence identified by participants, obtain necessary examinations and medical opinions, and conduct hearings when requested without arbitrary time limits. As the commenter correctly notes, inadequate development can lead to inaccurate decisions, which unfairly deny benefits to deserving claimants. It is therefore critical that all claims processed under the Initiative have fully-developed records including all relevant evidence identified by the participant and any necessary examination reports or medical opinions. While it is certainly helpful for claimants to obtain and submit evidence on their own behalf, the minimal obligation is for a claimant to identify the location of pertinent records and authorize VA to obtain them. In obtaining records from various government and private sources, delays may be experienced in obtaining a response. Given that VA has no control over non-VA organizations and individuals, it is simply not practicable to establish fixed periods of time within which VA must act in this regard, except as otherwise provided in the ECA regulations. In fact, upon further reflection, VA has determined that a limited exception to the time period imposed upon VA in § 20.1504(b) is necessary to ensure fairness and full compliance with the duty to assist. This exception would cover the circumstance when, after issuance of the Statement of the Case (SOC), VA is put on notice of a change in circumstances, such as a worsening of the claimant's condition or the location of previously unobtained relevant evidence. In order to ensure full compliance with the duty to assist under the VCAA, *see* 38 U.S.C. 5103A, VA may have an obligation to order a new examination for the claimant or to obtain copies of the relevant records. However, due to the time required to schedule and conduct a new examination or locate and obtain new records, these actions may make it challenging, if not impossible, for VA to comply with the time limit in § 20.1504(b), which requires VA to certify and transfer the appellate record to the Board no later than 60 days from the date of filing the Substantive Appeal. Consequently, out of fairness to the claimant, we are amending § 20.1504(b) to create an exception to the 60-day time period for certification when VA is required under 38 U.S.C. 5103A and 38 CFR 3.159(c) to provide assistance in obtaining evidence after issuance of the SOC.

The ECA Initiative does contain distinct time periods for claimants to take certain actions, which we believe are reasonable. Claimants are in the unique position of knowing the dates and places where they received medical treatment relevant to their claims. When the claimant adequately notifies VA of relevant evidence and authorizes VA to obtain the evidence, VA then has a duty to assist the claimant in obtaining this evidence. The sooner that the claimant provides VA with this information and authorization, the more complete the record will be at the beginning of the claims process. This is a significant feature of the ECA Initiative—to develop a complete record as early in the process as possible, so that informed and correct decisions may be made.

Although we refrain from establishing any fixed time limits on VA beyond the one outlined in § 20.1504(b), we want to make clear this does not mean that VA intends to unnecessarily delay action on ECA claims. To the contrary, it is our stated intention to develop and adjudicate ECA claims as quickly as possible by greatly reducing the amount of time that a case sits without any action occurring while waiting for a statutory or regulatory response period to end. Further, we also reject the commenter's suggestion that we impose additional time limits on VA because such action is beyond the scope of this rulemaking and the ECA Initiative. The purpose of the ECA is to evaluate whether claims processing can be expedited by claimants' voluntary waiver of certain existing statutory and regulatory response periods and pre-screening of cases by the Board. It is not the goal of the Initiative to study the feasibility of imposing rating deadlines on VA. Accordingly, for the above reasons, we make no change based on the comments received, but we make one change to the time limit in § 20.1504(b), as discussed.

2. Time Limits on Claimants

One commenter stated that the reduced time limits under the Initiative for claimants are likely to result in inadequate records and inaccurate decisions. The commenter noted that several of the time limits to be observed by participants under the Initiative are unduly strict and ''unreasonable,'' particularly the period participants have to respond to a VCAA notice letter and to subsequent VA requests for information and evidence. The commenter stated that claimants and their representatives often have to wait ''weeks or months'' to receive requested treatment records from medical-care providers, and that such a wait would likely result in participants missing the aforementioned deadlines. The commenter also noted that claimants' medical conditions often worsen over time and that treatment records reflecting such increase in symptomatology may not be available until after the VCAA notice response period expires.

Additionally, the commenter stated that evidence submitted after the deadlines in § 20.1504(a)(1) and (2) would not be able to be considered by VA, resulting in unfair denials of worthy claims. Further, the commenter added that ''there is no provision in the VA's proposed regulations that will permit the claimant to submit * * * newly obtained evidence or information to VA since motions for an extension of time to submit necessary information must be filed with VA before the applicable time period runs.'' Finally, the commenter stated that given the difficulties in obtaining medical evidence, VA should not ''penalize'' participating claimants for circumstances outside of their control.

Although in the notice of proposed rulemaking we stated that ECA participants agree to waive the 1-year period provided under 38 U.S.C. 5103(b)(1) and 38 CFR 3.159(b)(1), we wish to correct that statement. There is no such waiver under the ECA. Rather, an ECA participant must, within 30 days, respond to VA's VCAA notice concerning the information and evidence necessary to substantiate a claim. An ECA participant may respond to VA's notice by providing information or evidence in the claimant's possession, identifying necessary evidence that the claimant requires VA's assistance to obtain, or notifying VA that no additional evidence exists. *See* 38 CFR 20.1503(d) (Upon executing the Agreement and Waiver of Rights, the participant will identify all relevant evidence in support of his or her claim(s), including any VA records, non-VA Federal records, and any private records, provide the evidence, or notify VA that such evidence does not exist, within the time prescribed in § 20.1504(a)(1)). If the participant does not respond to VA's notice within 30 days, the implied revocation provisions of § 20.1509(c) apply and the claim will

be decided using ordinary, non-ECA procedures. However, if the participant responds within 30 days to VA's notice of the information and evidence necessary to substantiate the claim, VA will make reasonable efforts to obtain the evidence the participant has authorized the Department to obtain and adjudicate the claim. 38 U.S.C. 5103A; 38 CFR 3.159(c).

Section 3.159(b)(1) of title 38, Code of Federal Regulations, does not require a claimant to respond to VA's notice within 30 days, although VA may decide the claim if the claimant does not respond. It is our experience that often a claimant does not respond to the notice, VA decides the claim, and then the claimant submits relevant evidence. The ECA is designed to short-circuit this time-consuming adjudication process by requiring a claimant to affirmatively advise VA of the existence of relevant evidence, provide VA with such evidence, or advise VA that no other relevant evidence exists or is available, so that, to the fullest extent possible, all available evidence can be compiled before a claim is adjudicated. In order to clarify our intent, we are revising proposed §§ 20.1503(d) and 20.1504(a)(1) and (2) to explain what type of response is required from an ECA participant within the specified periods.

An ECA participant, nonetheless, has, as provided in 38 U.S.C. 5103(b)(1) and 38 CFR 3.159(b)(1), 1 year from the date of the section 5103(a)—notice in which to submit the information and evidence that VA has notified the participant that the participant must provide. *See* 38 CFR 20.1500(c) (any matter not otherwise covered by this subpart will be governed by existing rules in this title). If evidence is received by VA after the SOC is issued, the evidence will not be subject to another AOJ adjudication, but instead may be considered by the Board in the first instance. *See* 38 CFR 20.1508(b).

We are making one additional change to proposed § 20.1504(a)(1) by making the response period 30 days rather than 60 days. This revision to proposed § 20.1504(a)(1) will make it conform to the response period already contained in 38 CFR 3.159(b)(1), as revised by 73 FR 23353, 23356, on April 30, 2008.

In addition, we point out that several of the Initiative's provisions specifically contemplate a participant submitting, and VA considering, evidence after the initial 30-day VCAA notice response period has expired. For example, § 20.1508(b)(2) provides that, if new evidence is submitted by a participant or representative following the issuance of an SOC, the participant will be deemed to have waived AOJ review of such evidence so that the evidence may be considered by the Board in the first instance. Moreover, § 20.1504(a)(6)(iii) allows participants 30 days to submit evidence or argument after their appeals have been certified and transferred to the Board. Any evidence submitted under this provision would necessarily be filed after the 30-day VCAA response period has elapsed.

While participants and their representatives should be as thorough as possible in responding to VCAA notice letters or follow-up information requests, evidence submitted or identified after the expiration of the 30-day response periods will still be considered by the AOJ or the Board, provided such submission is allowed under other provisions of law. The remainder of the comments expressing concern that the ECA will result in inadequate records and inaccurate decisions are rejected for the reasons discussed above.

D. Good Cause Exception

One commenter stated that the ''good cause'' exception for each of the enumerated time limits is unduly strict and should be liberalized to ensure the success of the Initiative. The commenter's primary concern focused on the use of the good cause exception as it relates to the 60-day time period in proposed § 20.1504(a)(1) (now changed to 30-days in the final rule) for responding to a VCAA notice letter under the Initiative. The comment appears to be based on the assumption that VA will not consider evidence submitted after the VCAA notice response period has expired. As explained in section C.2 above, ECA participants do not waive the 1-year period prescribed in section 5103(a). An ECA participant is not required to submit all evidence relating to their claim within 30 days of the date of VA's section-5103(a) notice. Rather, as explained above, what we intend is that an ECA participant will be required to respond to VA's notice either by providing the evidence requested, identifying evidence relevant to substantiating the claim and authorizing VA to obtain the evidence, or notifying VA that no such evidence exists.

ECA participants are not necessarily required to *submit* any evidence at all within the response period in § 20.1504(a)(1) or (2), though they are free to do so. All a participant has to do to comply with the notice response period(s) is to affirmatively *respond* by identifying the relevant evidence then in existence and authorizing VA to obtain such evidence or notifying VA that no such evidence exists. *See* 38 CFR 20.1503(d). It is then *VA's* responsibility to make reasonable attempts to obtain relevant evidence identified by the ECA participant, including any private evidence that the claimant adequately identifies and authorizes VA to obtain. 38 U.S.C. 5103A(b). Therefore, because a sufficient response to a VA request for information and evidence only requires the identification of relevant information or evidence, if any, within the allowed response period, along with providing VA with authorization to obtain the same, we disagree with the commenter's suggestion that the good cause exception as provided for in § 20.1509(e), as it applies to responding to VA's section-5103(a) notice, is inadequate as drafted.

Because participants are not barred from submitting additional evidence following the expiration of the response periods set forth in § 20.1504(a)(1) and (a)(2), an extension motion is not required to submit evidence after those periods have expired. An extension motion, as described in § 20.1509(e), is *only* needed if the participant wishes to extend a time limit in subpart P, most of which consist of response times. *See* 38 CFR 20.1504(a).

Finally, it is noted that the commenter seems to take an unduly restrictive interpretation of the situations for which a motion for extension of time may be granted pursuant to § 20.1509(e). While examples are provided of situations in which good cause may be found, such as ''illness of the participant or the representative of such severity that precludes action during the period,'' the proposed regulation specifically states that the examples of good cause provided ''include, but are not limited to,'' the enumerated examples. Accordingly, provided that a participant makes a timely request for an extension of time with adequate showing of good cause, the participant may obtain an extension of time. Accordingly, for all of these reasons, we make no change to the proposed rule based on this comment.

E. Data Collection

One commenter expressed concern regarding VA's data collection activities under the Initiative. The commenter stated that it is ''essential that good work load data and other management data be collected * * * and that this information be used internally and made available publicly so that the Initiative's new procedures can be carefully evaluated on an ongoing basis.'' The commenter suggested several pieces of information that

should be tracked, including ''the number of claimants that volunteer for the program, how long each stays in the program, if they are voluntarily or involuntarily dismissed from the program, and what results are reached.'' The commenter also suggested that data collected at participating VA regional offices be compared to that obtained at a control group of non-participating offices.

While we wholeheartedly agree with the commenter that comprehensive data collection will be critical to accurately evaluate the success of the Initiative, the description of such data collection efforts is not necessary or appropriate for inclusion in this rulemaking action. Suffice it to say, we plan to gather a wide variety of information throughout the course of the Initiative to ensure that all aspects of the pilot program are carefully reviewed and evaluated. As the commenter suggests, the information we intend to track includes, among many other things, the number of participants, the number of instances of revocation of participation, processing times, and the ultimate disposition of ECA claims. We plan on tracking customer satisfaction with the ECA to help assess the strengths and weaknesses of the Initiative. Moreover, we intend to compare all data collected regarding ECA participants with data from claimants who did not elect ECA participation. All data collected and reports generated as part of the Initiative will be obtainable by the public in the same manner and means as other VA data and reports. Accordingly, we make no change to the proposed rule based on this comment.

F. The Need for the ECA

One commenter questioned the need for the ECA, pointing out that there was no discernable advantage that claimants would receive from participation in the ECA, ''other than that which would be expected to naturally flow from submitting procedural documents and evidence as soon as practicable.'' The commenter suggested ''that the RO speed up the certification and transfer time to the BVA, unilaterally, and encourage claimants to unilaterally proceed with their appeal as quickly as possible, without the necessity of waiving procedural defects and without the need for rule changes.'' For all of the many reasons already discussed above, as well as in the notice of proposed rulemaking, VA respectfully disagrees with the assertion that claimants will not benefit from participating in the ECA. Moreover, because the Initiative is specifically designed as a 2-year pilot project at a limited number of VA facilities, the data collected during this period of time will enable a more fully informed assessment of the success and weaknesses of the Initiative to be made, including whether it should be further expanded.

In addition, it is noted that participation in the ECA will be entirely voluntary. Accordingly, any claimant who does not feel comfortable participating in the program, or does not feel that participation would be advantageous, is free to proceed under the existing VA claims adjudication and appeals process. Further, any ECA participant will be able to opt out of the Initiative at anytime without any negative consequences for doing so. Instead, the claim or appeal will simply be returned to the normal claims adjudication and appeals process at the point at which the participant withdrew from the program. Thus, participation could never be disadvantageous to a claimant.

Finally, as correctly noted by another commenter, the ECA Initiative does not change VA's basic obligation to assure that the varying parts of its benefits programs ''work together to give prompt, efficient, fair, and accurate service to disabled veterans and other claimants for VA benefits.'' We agree with this proposition. As discussed at length above, the Initiative leaves intact VA's duties to notify claimants of the information and evidence needed to substantiate their claim, and VA's duty to assist claimants in obtaining relevant evidence, including securing a VA examination when required by existing law. At every point in the Initiative, the paternalistic and non-adversarial nature of the VA claims adjudication system is preserved. Thus, for all of the above reasons, we make no changes based on these comments.

G. The Impact of the ECA on Workload at Trial Sites

Finally, one commenter expressed concern that the ECA Initiative would have an adverse impact on the overall workload at the Philadelphia regional office, which is one of the trial sites. He noted that Philadelphia currently handles many cases that are ''brokered'' from the Boston regional office, and stated that the addition of ECA cases to Philadelphia's workload will negatively impact the processing of the brokered cases. The commenter also raised some general concerns with VBA's case brokering process that are beyond the scope of this rulemaking action and will not be further addressed here.

We respectfully disagree with the commenter's concerns. To be eligible to participate in the Initiative, a claimant must reside within the jurisdiction of one of the four participating VA regional offices (the jurisdiction of each of the four participating regional offices is specifically outlined in § 20.1501(e)). As a result of this requirement, the Philadelphia regional office would only be allowed to handle ECA claims from participants who already reside within the jurisdiction of that office. Such claims would already have been the responsibility of the Philadelphia regional office, regardless of a claimant's decision to participate in the Initiative. Because ECA participants are taken from the same pool of claimants already being served by the four respective participating regional offices, the Initiative simply will not increase the number of claims handled by each office, and therefore will not have an impact on the overall workload of any of the test sites, including the Philadelphia regional office. Moreover, even in the unlikely event that Philadelphia's workload did increase, VBA would be free, at the discretion of management, to reduce or discontinue the brokering of cases to that office and instead broker Boston cases to another facility. We make no changes to the proposed rule based on these comments.

H. Technical Amendments; Pilot Site Change

In addition to the revisions discussed above, we are making three minor technical changes to the proposed rule, and one change regarding the pilot sites. First, we are changing the language in § 20.1500(d) to more clearly set forth the effective date of the Initiative. Second, we are making a minor revision to § 20.1501(d) to clarify that representatives of ECA participants must be accredited by VA. *See* 38 CFR 14.631. Third, we are adding a cross-reference and brief discussion to § 20.1508(b)(1) to more clearly indicate that an implied revocation from the Initiative will occur if a participant does not agree to waive initial consideration by the agency of original jurisdiction of any new evidence obtained by VA following the issuance of a Statement of the Case. *See* 38 CFR 20.1509(c)(2).

In addition to the foregoing, we are changing one of the four pilot sites due to increased workload that has arisen at the St. Paul regional office since publication of the NPRM. The St. Paul, Minnesota regional office will no longer be involved in the ECA pilot program. Rather, the regional office in Lincoln, Nebraska, will be one of the four pilot sites. The jurisdiction of the Lincoln regional office extends to the entire State of Nebraska.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It will not affect any small organizations or small governmental jurisdictions, and will not have a significant economic impact on these small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirement of 5 U.S.C. 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866, as it raises novel legal or policy issues arising out of legal mandates.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any 1 year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

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

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: August 20, 2008.

James B. Peake,

Secretary of Veterans Affairs.

■ For the reasons set forth in the Preamble, VA amends 38 CFR parts 3 and 20 as follows:

PART 3—ADJUDICATION

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

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

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

■ 2. Add § 3.161 to read as follows:

§ 3.161 Expedited Claims Adjudication Initiative—Pilot Program.

Rules pertaining to the Expedited Claims Adjudication Initiative Pilot Program are set forth in part 20, subpart P, of this chapter.

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

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

■ 4. Add subpart P to read as follows:

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

Sec.

20.1500 Rule 1500. Expedited Claims Adjudication Initiative.
20.1501 Rule 1501. Definitions.
20.1502 Rule 1502. Eligibility.
20.1503 Rule 1503. Election, identification of evidence, and representation.
20.1504 Rule 1504. Time limits.
20.1505 Rule 1505. Review of initial benefits claim decision.
20.1506 Rule 1506. Board review of cases.
20.1507 Rule 1507. Hearings.
20.1508 Rule 1508. Waiver.
20.1509 Rule 1509. Compliance and revocation of participation.
20.1510 Rule 1510. Termination of the Initiative.

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

§ 20.1500 Rule 1500 Expedited Claims Adjudication Initiative.

(a) *Purpose.* The Expedited Claims Adjudication Initiative is a pilot program designed to streamline the claims adjudication and appeals process. This subpart establishes procedures governing this Initiative.

(b) *Outline of Initiative.* This Initiative allows eligible claimants to voluntarily participate in an alternative claims

adjudication program as set forth in this subpart, which is predicated on the claimant's waiver of certain identified statutory and regulatory time limits, procedural rights, and processing issues that may arise.

(c) *Scope.* Except as specifically provided in this subpart, claims processed under this Initiative will be adjudicated according to the procedures outlined in part 3 of this chapter, and appeals will be processed according to the Appeals Regulations and Rules of Practice, as outlined in parts 19 and 20 of this chapter. Any matter not otherwise covered by this subpart will be governed by existing rules in this title.

(d) *Duration.* The Secretary will accept an executed Agreement and Waiver of Rights as provided in § 20.1503 of this part for a period not to exceed 2 years from December 5, 2008.

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

§ 20.1501 Rule 1501. Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Initiative* means the Expedited Claims Adjudication Initiative as promulgated by this subpart.

(b) *Participant* means any eligible claimant who elects to participate in the Initiative by executing, with his or her representative, an Expedited Claims Adjudication Initiative Agreement and Waiver of Rights as provided in § 20.1503 of this part.

(c) *Covered claim or covered claims* means any claim or claims, as described in § 20.1502(c) of this part, that a participant elects to have processed under the rules governing the Initiative, including any downstream element of the claim(s), such as assignment of a disability rating and effective date, and any claim that is inextricably intertwined with a covered claim.

(d) *Representative* means an accredited representative of a recognized Veterans Service Organization or an accredited attorney or agent, as set forth in part 14 of this chapter, for whom a claimant has properly executed and filed a VA Form 21–22, ''Appointment of Veterans Service Organization as Claimant's Representative,'' or a VA Form 21–22a, ''Appointment of Individual as Claimant's Representative,'' as required by § 14.631 of this chapter.

(e) *Participating VA regional office* means one of the following four VA regional offices: Nashville, Tennessee; Lincoln, Nebraska; Seattle, Washington; and Philadelphia, Pennsylvania. The jurisdiction of the Nashville, Lincoln, and Seattle regional offices extends to residents of Tennessee, Nebraska, and Washington, respectively. The jurisdiction of the Philadelphia regional office extends to residents of the 40 easternmost counties of Pennsylvania and residents of the seven southernmost counties of New Jersey. For purposes of this Initiative only, the jurisdiction of these regional offices extends only to a covered claim, as described in § 20.1502(c) of this part.

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

§ 20.1502 Rule 1502. Eligibility.

To participate in the Initiative, a claimant must:

(a) At the time the Agreement and Waiver of Rights is executed, have a representative, as defined in § 20.1501(d) of this part;

(b) Reside within the jurisdiction of a participating VA regional office, as defined in § 20.1501(e) of this part; and

(c) File one of the following types of claims for VA disability compensation as outlined in parts 3 and 4 of this chapter at a participating VA regional office:

(1) Original claim;

(2) Claim for an increased rating;

(3) Claim to reopen a previously-denied claim based on the submission of new and material evidence as provided in § 3.156 of this chapter; or

(4) Requests for revision of a decision of an agency of original jurisdiction under § 3.105 of this chapter based on clear and unmistakable error.

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

§ 20.1503 Rule 1503. Election, identification of evidence, and representation.

(a) *When and how election made.* Upon the filing of a claim described in § 20.1502(c) of this part, VA will promptly notify the claimant in writing of the opportunity to participate in the Initiative and provide the claimant with an Agreement and Waiver of Rights. A claimant may elect to participate in the Initiative by filing an executed Agreement and Waiver of Rights as provided in paragraphs (b) and (c) of this section within 30 days of the date of the notice of the opportunity to participate in the Initiative. An election to participate in the Initiative can be revoked at any time in accordance with § 20.1509 of this part.

(b) *Execution of agreement.* To participate in the Initiative, a claimant and his or her representative must execute an Agreement and Waiver of Rights on a form prescribed by the Secretary. The claimant will specifically identify in the Agreement and Waiver of Rights all claims he or she wishes to have processed under the Initiative.

(c) *Where to file.* The executed Agreement and Waiver of Rights must be filed with the participating VA regional office that has jurisdiction over the claim.

(d) *Identification of relevant evidence.* Upon executing the Agreement and Waiver of Rights, the participant will respond, within the time period prescribed in § 20.1504(a)(1), to VA notice regarding the information and evidence necessary to substantiate the claim by identifying all relevant evidence in support of his or her claim(s), providing the requested evidence, or notifying VA that no such evidence exists. Relevant evidence may include any VA records, non-VA Federal records (such as Social Security disability records), and any private records (such as treatment records from a family physician). If the participant requires assistance from VA in obtaining any identified records, the participant will provide VA, upon request, the appropriate release form so VA may attempt to promptly obtain the records on behalf of the participant. VA must receive the necessary information and evidence requested from the participant within 1 year of the date of the notice, in accordance with § 3.159(b)(1) of this chapter.

(e) *Effect of change in representation on the election.* If a participant changes or terminates representation after having made a valid election to participate in the Initiative, participation in the Initiative will continue under the terms of the signed Agreement and Waiver of Rights, unless the participant indicates, in writing, pursuant to § 20.1509(b) of this part, that he or she wishes to revoke participation.

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

§ 20.1504 Rule 1504. Time limits.

The following time limits will be applicable to all covered claims:

(a) *Time limits to be observed by the participant.* The participant will comply with the following time limits for all covered claims:

(1) *Response to initial notice letter.* The time limit for responding to the notification regarding the information and medical or lay evidence necessary to substantiate a claim in the manner required by § 20.1503(d) will be 30 days.

(2) *Subsequent requests by VA for additional information and evidence.* The time limit for responding to any subsequent request by VA for additional information or evidence, either by notifying VA of the existence of such information or evidence, providing such evidence, or notifying VA that no such evidence exists, will be 30 days.

(3) *VA request for waiver.* The time limit for responding to a VA request for waiver as set forth in § 20.1508 of this part, will be 30 days.

(4) *Notice of Disagreement.* The time limit for filing a Notice of Disagreement pursuant to § 20.302(a) of this part will be 60 days.

(5) *Substantive Appeal.* The time limit for filing a Substantive Appeal pursuant to § 20.302(b) of this part will be 30 days.

(6) *Following certification of appeal to the Board.* Following the issuance of notification that the appeal has been certified and transferred to the Board, the time limit for taking the following actions pursuant to § 20.1304 of this part will be 30 days:

(i) Request a hearing before the Board,

(ii) Request a change in representation, or

(iii) Submit additional evidence or argument.

(b) *Time limit to be observed by the participating VA regional office.* The participating VA regional office shall certify covered claims and transfer the appellate record to the Board as set forth in §§ 19.35 and 19.36 of this chapter within 30 days of the receipt of the Substantive Appeal, or within 30 days of receipt of any additional submissions following the Substantive Appeal, but no later than 60 days from the receipt of the Substantive Appeal. However, if, after issuance of the Statement of the Case, additional assistance in obtaining evidence is required in order to comply with § 3.159(c) of this chapter, the participating VA regional office shall certify covered claims and transfer the appellate record to the Board within 60 days after the requisite action is completed.

(Authority: 38 U.S.C. 501(a) and 5103A)

§ 20.1505 Rule 1505. Review of initial benefits claim decision.

If a participant files a Notice of Disagreement as to a covered claim, the decision of the participating VA regional office will be reviewed by a Decision Review Officer under the provisions set forth in § 3.2600 of this chapter.

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

§ 20.1506 Rule 1506. Board review of cases.

(a) The Board will screen cases that are certified and transferred to the Board under the Initiative to determine whether the record is adequate for decisional purposes. If the Board determines that the record is inadequate, the Board will take appropriate action pursuant to § 19.9 of this chapter.

(b) A case screened by the Board for purposes of determining the adequacy of the record will be decided in docket order and will not be advanced on the Board's docket except as provided in § 20.900(c) of this part.

(Authority: 38 U.S.C. 7107(a), (f))

§ 20.1507 Rule 1507. Hearings.

(a) *Before the participating VA regional office.* Upon request, a participant is entitled to a hearing by a Decision Review Officer before the participating VA regional office as provided in §§ 3.103(c) and 3.2600(c) of this chapter, subject to the following limitations:

(1) No hearing will be conducted prior to the initial adjudication of the claim by the participating VA regional office.

(2) Only one hearing on a claim will be conducted at the participating VA regional office and the hearing will be conducted by a Decision Review Officer in accordance with § 3.2600 of this chapter.

(b) *Before the Board.* Upon request, a participant is entitled to a hearing before the Board as provided in §§ 20.700 through 20.717, and 20.1304, subject to the following limitations:

(1) Only one hearing before the Board will be conducted.

(2) After consultation with the participant and his or her representative, the Board will determine whether the hearing will be conducted in person in Washington, DC, at the participating VA regional office with jurisdiction over the claim, or by electronic equipment as set forth in § 20.700(e) of this part. The Board's determination will be based primarily on the type and place of hearing which will allow for scheduling at the earliest possible date. An in-person hearing will be conducted in Washington, DC, only if geographically convenient for the participant and his or her representative, or if the participant agrees to travel to Washington, DC, at his or her own expense.

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

§ 20.1508 Rule 1508. Waiver.

(a) *General.* When requested by VA, a participant will waive, in writing, identified procedural processing issues and actions relating to covered claims. VA will provide the participant with a clear explanation, in writing, as to what rights he or she may be waiving. If a hearing on appeal is conducted, the waiver may be formally and clearly entered on the record at the time of hearing. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part. Such waiver is not required for matters that have already been waived by virtue of electing participation in the Initiative.

(b) *Evidence obtained or submitted after the Statement of the Case.*

(1) *Evidence obtained by VA.* If new evidence is obtained by VA following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, and the claim(s) is not otherwise granted in full based on this new evidence, VA will provide a copy of such evidence to the participant and representative, and request a waiver of review by the agency of original jurisdiction of such evidence and issuance of a Supplemental Statement of the Case pursuant to the provisions set forth in § 20.1304(c) of this part. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part. The failure of the participant to agree to a waiver of initial consideration by the agency of original jurisdiction of any evidence obtained by VA will constitute an implied revocation of participation in the Initiative, as provided by § 20.1509(c)(2).

(2) *Evidence submitted by participant or representative.* If new evidence is submitted by the participant or representative following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, the participant, by virtue of executing a valid Agreement and Waiver of Rights, is deemed to have knowingly and voluntarily waived agency of original jurisdiction review of such evidence and issuance of a Supplemental Statement of the Case, which permits the Board to review such evidence in the first instance.

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

§ 20.1509 Rule 1509. Compliance and revocation of participation.

(a) Unless the participant revokes his or her participation in the Initiative as provided in paragraphs (b), (c) or (d) of this section, all covered claims will continue to be processed by VA or the Board in accordance with the provisions of this subpart until a final decision of the agency of original jurisdiction or the Board has been issued.

(b) *Express revocation.* A participant may revoke participation in the Initiative at any time by submitting a revocation request in writing. The revocation request must be filed with the participating VA regional office unless the case has been certified and

transferred to the Board, in which case the revocation request should be filed with the Board. As of the date of receipt of the revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative.

(c) *Implied revocation.* The failure of a participant to meet the terms of these rules, as outlined in the executed Agreement and Waiver of Rights, will have the same result as if the participant had expressly revoked his or her participation in the Initiative. As of the date of the action constituting such implied revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative. Grounds for implied revocation of participation include, but are not limited to:

(1) The failure of the participant or representative, as appropriate, to comply with any of the time limits set forth in § 20.1504(a) of this part;

(2) The failure to waive initial consideration by the agency of original jurisdiction of any evidence obtained by VA that was not considered in the Statement of the Case;

(3) A request by a participant or representative for an extension of any of the time limits set forth in § 20.1504(a) of this part, unless a motion for good cause is granted, as described by paragraph (e) of this section; and

(4) Any other failure on the part of the participant to comply with the terms of the Agreement and Waiver of Rights, as determined by VA.

(d) *Death of participant.* If a participant dies while his or her claim is being processed, participation in the Initiative will be deemed revoked.

(e) *Extensions.* Extensions of any of the time limits described in this subpart may only be granted when the participant demonstrates on motion that there is good cause for the extension request. At no time may time periods be extended beyond those provided by law to all claimants and appellants. Examples of good cause include, but are not limited to, illness of the participant or the representative of such severity that precludes action during the period; death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made.

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

§ 20.1510 Rule 1510. Termination of the Initiative.

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

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

[FR Doc. E8–26310 Filed 11–4–08; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2008–0495; FRL–8737–9]

Withdrawal of the Federal Water Quality Standards Use Designations for Soda Creek and Portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Withdrawal of direct final rule.

SUMMARY: EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published a direct final rule with a parallel proposal for this action on August 19, 2008. EPA is withdrawing the direct final rule prior to its effective date because EPA received comments that could be viewed as adverse. The Federal water quality standards designating cold water biota uses are no longer necessary since EPA approved Idaho's adopted uses that result in protection for cold water biota. EPA is also promulgating the withdrawal of the water quality standards variance provision applicable to these uses, because this provision is no longer necessary given the withdrawal of the Federal water quality standards designating these uses.

DATES: Effective November 5, 2008, EPA withdraws the direct final rule published at 73 FR 48300, on August 19, 2008. The effective date of this final rule is December 5, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2008–0495. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed on the Web site, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at two docket facilities. The OW Docket Center is open from 8:30 until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, and 1301 Constitution Avenue, NW., Washington, DC 20004. 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. Publicly available docket materials are also available in hard copy at U.S. EPA, Region 10, and 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553–1834.

FOR FURTHER INFORMATION CONTACT: Danielle Salvaterra, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–1631; fax number: 202–566–0409; e-mail address: *salvaterra.danielle@epa.gov* or Lisa Macchio, U.S. EPA, Region 10, Mailcode: OWW–131, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; telephone number: 206–553–1834; fax number: 206–553–0165; e-mail address: *macchio.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published the proposal for this final rulemaking on August 19, 2008. EPA is taking further action to withdraw a direct final rule that EPA published on

August 19, 2008 (73 FR 48300). We stated in that direct final rule that if we received adverse comment by September 18, 2008, the direct final rule would not take effect, and we would publish a timely withdrawal in the **Federal Register**. EPA received two comments which could be viewed as adverse comments. Importantly, because the comments when considered by EPA did not result in a change in EPA's position, the direct final rule would have resulted in the same action EPA is taking by this final rule. As stated in the direct final rule and the parallel proposed rule, we have not instituted a second comment period on this action.

In July 1997, EPA promulgated a Federal rule designating uses for water bodies in the State of Idaho, including the designation of cold water biota for Soda Creek, and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River, with the exception of any portion in Indian country (62 FR 41183, July 31, 1997). In March 2000, Idaho adopted a revised use for a segment of Blackfoot River, which changed from ''Protected for Future Use'' to undesignated. In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). In March 2002, Idaho adopted a use designation of cold water biota for segments of Canyon Creek and South Fork Coeur d'Alene River. In March 2006, Idaho adopted a revised use for Soda Creek, which changed from ''NONE'' to undesignated. As described in the undesignated surface waters provision of Idaho's Water Quality Standards (IDAPA 58.01.02.101.01.a), the Idaho Department of Environmental Quality (IDEQ) applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. Thus, cold water aquatic life criteria now apply to Soda Creek and the segment of the Blackfoot River. EPA approved Idaho's revised water quality standards for segments of Canyon Creek and South Fork Coeur d'Alene River on June 24, 2005, and for Soda Creek on August 15, 2006. EPA approved Idaho's revised water quality standards for the segment of the Blackfoot River, except for any portion in Indian country, on August 22, 2006. Thus, the Federal water quality standards designating Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River for cold water biota use (40 CFR 131.33(b)) are no longer necessary, and EPA is promulgating the withdrawal of these standards with this action. EPA is also promulgating the withdrawal of the water quality standards variance provision applicable to these uses (40 CFR 131.33(d)), because this provision is no longer necessary given the withdrawal of the Federal water quality standards designating these uses.

I. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene, and Blackfoot River in Idaho could be indirectly affected by this rulemaking because water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws the Federal water quality standards designating cold water biota uses that are no longer necessary since EPA approved Idaho's adopted uses that result in protection for cold water biota, the effect of this rulemaking may only occur when entities seek variances to water quality standards. Entities seeking variances from use designations on these waters will now apply to the state, and EPA will act on the state's decision to grant the variance.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho.
Municipalities	Publicly owned treatment works discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

II. Background

On July 31, 1997, pursuant to section 303(c) of the Clean Water Act (CWA), EPA promulgated water quality standards for Idaho, which designated several water body segments for cold water biota use. These segments included: a segment of the Blackfoot River, then identified as USB 360—Equalizing Dam to mouth (with the exception of any portion in Indian country); a segment of Canyon Creek (segment PB 121)—below mining impact; a segment of South Fork Coeur d'Alene River (segment PB 140S)—Daisy Gulch to mouth; and Soda Creek (segment BB 310)—source to mouth.

A. *Blackfoot River:* In March 2000, the Idaho Legislature adopted revised water quality standards, providing an undesignated use for the segment of the Blackfoot River that the Federal rule addressed (IDAPA 58.01.02.150.09). In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). Given the flow limitations on the Blackfoot River segment, IDEQ removed the aquatic life use designation of ''Protected for Future Use'' from the Blackfoot River segment and left the use undesignated so that a more appropriate aquatic use designation may be described and added to Idaho water quality standards in the future. As described in the undesignated surface waters provision (IDAPA 58.01.02.101.01.a), IDEQ applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. As EPA stated in its approval letter of August 22, 2006, EPA considers Idaho's revision to provide a default cold water aquatic life use designation for the Blackfoot River segment, except for any portion in Indian country. EPA would consider any change in the level of protection afforded to the Blackfoot River segment to be a revision to Idaho's water quality standards, subject to EPA review pursuant to 40 CFR Part 131. The water quality standards revision also included a reformatting and renumbering of the Water Body/Basin Designation Tables and the segment of the Blackfoot River previously identified as USB 360 (Equalizing Dam to mouth) was renumbered to US–1 (Fort Hall Main Canal diversion to mouth), which is within the Blackfoot Subbasin of the Upper Snake Basin. Thus, cold water aquatic life criteria now apply to the US–1 segment of the Blackfoot River, which was formerly

identified as USB 360. EPA approved Idaho's revision, except for any portion in Indian country, on August 22, 2006. The 1997 promulgation establishing the Federal water quality standards designating uses for Blackfoot River did not apply to waters in Indian country; likewise, EPA's approval of the state's designated use for Blackfoot River excludes waters in Indian country.

B. *Canyon Creek and South Fork Coeur d'Alene River:* On March 15, 2002, the Idaho Legislature adopted revised water quality standards, including the cold water biota designated use for Canyon Creek, which was previously identified as PB 121 (below mining impact) and is now renumbered and renamed segment P–14 (from and including Gorge Gulch to mouth); and South Fork Coeur d'Alene River, which was previously identified as segment PB 140S and is now renumbered and includes two segments: Segment P–1 (Canyon Creek to mouth) and segment P–11 (from and including Daisy Gulch to Canyon Creek) (IDAPA 58.01.02.110.09). Canyon Creek and the South Fork Coeur d'Alene River are within the South Fork Coeur d'Alene River Subbasin of the Panhandle Basin. Canyon Creek in its entirety, including segments P–14 (from and including Gorge Gulch to mouth) and P–15 (source to Gorge Gulch), is designated for cold water biota. The South Fork Coeur d'Alene River is also designated for cold water biota use in its entirety; the South Fork Coeur d'Alene River upstream of Daisy Gulch (segment P–13—source to Daisy Gulch) was already designated as a cold water biota use. When the State first established its water quality standards, it included the phrase ''below mining impact'' to identify a number of stream segments in order to account for the lingering adverse environmental effects of numerous abandoned mines in the State. EPA recognized the concerns of the State and used the same terminology in its promulgation of Federal standards on July 31, 1997. EPA approved Idaho's revisions on June 24, 2005.

C. *Soda Creek:* In March 2006, the Idaho Legislature adopted revised water quality standards, removing the use designation of ''NONE'' and providing an undesignated use for Soda Creek. In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). Soda Creek had been identified as segment BB 310 (source to mouth) and is now renumbered and includes three segments: segments B–23 (Soda Creek Reservoir Dam to Alexander Reservoir), B–24 (Soda Creek Reservoir), and B–25 (source to Soda Creek Reservoir) in the South Fork Clearwater Subbasin of the Clearwater Basin (IDAPA 58.01.02.160.02). IDEQ initially proposed that Soda Creek be designated for coldwater aquatic life use. However, due to a lack of data, particularly water temperature records, showing that cold water aquatic life criteria were met, Soda Creek was left undesignated. As described in the undesignated surface waters provision (IDAPA 58.01.02.101.01.a), IDEQ applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. Thus, cold water aquatic life criteria now apply to Soda Creek. EPA approved Idaho's revision on August 15, 2006. As EPA stated in this approval letter, EPA considers Idaho's revision to provide a default cold water aquatic life use designation for Soda Creek. EPA would consider any change in the level of protection afforded to Soda Creek to be a revision to Idaho's water quality standards, subject to EPA review pursuant to 40 CFR Part 131.

D. *EPA-approved Use Designations and Criteria:* For Blackfoot River (US–1) and Soda Creek (B–23, B–24, and B–25), the State now applies an undesignated use that is practically equivalent to the aquatic life use established by EPA in its July 31, 1997, rulemaking because cold water biota criteria apply. Specifically, Idaho's undesignated surface waters provision states (IDAPA 58.01.02.101):

''Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39–3604, Idaho Code, taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which includes all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable.

a. Because [IDEQ] presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, [IDEQ] will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed.

b. During the review of any new or existing activity on an undesignated water, [IDEQ] may examine all relevant data or may require the gathering of relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue.

c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then [IDEQ] will:

i. Complete the review and compliance determination of the activity in context with the new information on beneficial uses, and

ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation.''

For Canyon Creek (P–14) and South Fork Coeur d'Alene River (P–1 and P–11), the State now applies an aquatic life use designation that is the same as the one established by EPA in its July 31, 1997 rulemaking (''cold water biota''). Therefore, withdrawing the Federal water quality standards designating these uses will not result in a change in the level of protection afforded to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, or Blackfoot River.

III. Withdrawal of Federal Water Quality Standards

A. Proposal

On August 19, 2008 (73 FR 48351), EPA proposed to withdraw the Federal water quality standards designating Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River for cold water biota use, on the grounds that these Federal standards are no longer necessary, in light of Idaho's subsequent revisions to its state water quality standards.

B. Comments

One commenter was concerned that the proposed withdrawal of Federal water quality standards would reduce water quality monitoring requirements for Soda Creek and the pertinent portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River. However, EPA's withdrawal of Federal water quality standards neither removes nor imposes any requirements regarding water quality monitoring for these waters. EPA's final rule only removes the Federal use designation for the waters. State water quality standards identical or equivalent to those being withdrawn have been adopted by Idaho and have been approved by EPA. Therefore, the Federal water quality standards are no longer necessary.

Another commenter believed it should be made clear that site-specific aquatic life criteria for lead, zinc, and cadmium, which can be found at IDAPA 58.01.02.284, apply to Canyon Creek and South Fork Coeur d'Alene River. EPA agrees, and has revised the preamble to this rule accordingly. The commenter also noted an additional typographical error, which EPA has corrected in the final rule.

C. Final Rule

EPA is promulgating, as proposed, the rule to withdraw the Federal water

quality standards that designated uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River. For the reasons set forth in Section II, EPA's action does not change the water quality criteria that apply to these water bodies. Idaho's water quality criteria that provide protection for the cold water aquatic life use are found in several sections of Idaho's water quality standards. Specifically, the general surface water criteria applicable to all surface waters in Idaho are provided in IDAPA 58.01.02.200, and numeric criteria for toxic substances for waters designated for aquatic life use apply per IDAPA 58.01.02.210.01.a. IDAPA 58.01.02.250 provides additional aquatic life criteria applicable to the segments from which the Federal water quality standards are being withdrawn, including general criteria for pH and dissolved gas that apply to all aquatic life use designations (IDAPA 58.01.02.250.01), as well as cold water criteria for dissolved oxygen, temperature, ammonia (acute and chronic), and turbidity that apply to waters designated for cold water aquatic life (IDAPA 58.01.02.250.02). IDAPA 58.01.02.284 provides site-specific aquatic life criteria for lead, zinc, and cadmium that apply in Canyon Creek and South Fork Coeur d'Alene River.

IV. Withdrawal of Water Quality Standards Variance Provision

When, in July 31, 1997, EPA originally promulgated Federal water quality standards designating uses for Idaho waters (62 FR 41162), EPA also included a water quality standards variance provision (40 CFR 131.33(d)) authorizing the EPA Region 10 Regional Administrator to grant variances from the Federal water quality standards that designated the cold water biota uses. Because this final rule removes the Federal water quality standards designating these uses, provision 40 CFR 131.33(d) is no longer necessary and is also being withdrawn. EPA received no comments on the portion of the proposed rule withdrawing the water quality standards variance provision. EPA is therefore promulgating, as proposed, this portion of the rule. Idaho has adopted its own water quality standards variance provision (IDAPA 58.01.02.260), which was approved by EPA on June 25, 1996.

V. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This rule withdraws Federal requirements applicable to Idaho and imposes no regulatory requirements on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. The rule imposes no additional cost on the regulated community because it will not change the level of environmental protection already achieved. The rule imposes only minimal additional effort on the State of Idaho as the regulator, because entities seeking variances from use designations will now apply to the state instead of to EPA. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order (EO).

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), because it is administratively withdrawing Federal requirements that no longer need to apply to Idaho.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 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 this 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.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA sections 202 and 205. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

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 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 rule imposes no regulatory requirements on any State, Tribal, or local government. The rule imposes only minimal additional effort on the State of Idaho as the regulator, because entities seeking variances from use designations will now apply to the state instead of to EPA. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

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

This rule is not subject to EO 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in EO 12866, and EPA has no reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 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 rule 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, February 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 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.

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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on December 5, 2008.

List of Subjects in 40 CFR Part 131

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards.

Dated: October 30, 2008.

Stephen L. Johnson,

Administrator.

■ Accordingly, the amendments to the rule published on August 19, 2008 (73 FR 48300) are withdrawn as of November 5, 2008.

■ In addition, for the reasons set forth in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.33 [Amended]

■ 2. Section 131.33 is amended by removing and reserving paragraph (b) and by removing paragraph (d).

[FR Doc. E8–26402 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0571; FRL–8386–1]

Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a

tolerance for residues of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica (CAS Reg. No. 68584–82–7); when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. Keller and Heckman LLP, 1001 G St., NW, Suit, 500 Washington, DC 20001 as U.S. agent for Eka Chemicals AB, 455 80 Bobus, Sweden submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica on food or feed commodities.

DATES: This regulation is effective November 5, 2008. Objections and requests for hearings must be received on or before January 5, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0571. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0571. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 5, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0571, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 13, 2008 (73 FR 47184) (FRL–8376–8), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 8E7397) filed by Keller and Heckman LLP, 1001 G St., NW, Suit, 500 Washington, DC 20001 as U.S. agent for Eka Chemicals AB, 455 80 Bobus, Sweden. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica; CAS Reg. No. 68584–82–7. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received one comment. One comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food.

The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or

exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 640,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica is 640,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless

EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

IX. Conclusion

Accordingly, EPA finds that exempting residues of silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	
Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica, minimum number average molecular weight (in amu), 640,000.	68584–82–7
* * * * *	

[FR Doc. E8–26396 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2008–0251; FRL–8371–3]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 56 chemical substances which were the subject of premanufacture notices (PMNs). Four of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 56 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: The effective date of this rule is January 5, 2009 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before December 5, 2008. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on November 19, 2008.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before December 5, 2008, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0251, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0251. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0251. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be 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 docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Tracey Pennington, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *pennington.tracey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., Chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in

40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or after [*December 5, 2008*] are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is promulgating these SNURs using direct final rulemaking procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Additional rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy statement in support of the import certification appears at 40 CFR part 707, subpart B.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for 56 chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name if the specific name is claimed as CBI).
- CAS number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR.
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VI. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The specific activities designated as significant new uses are specified in the regulatory text section of this document. Certain new uses, including production limits and other uses designated in the

rule, are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII.

This rule includes SNURs on 3 PMN substances that are subject to ''risk-based'' consent orders under TSCA section 5(e)(1)(A)(ii)(I) wherein EPA determined that activities associated with the PMN substances may present unreasonable risk to health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called ''5(e) SNURs'' on these substances are promulgated pursuant to 40 CFR 721.160, and are based on and consistent with the provisions in the underlying consent orders. In addition, the rule includes one SNUR on a PMN substance that is subject to an ''exposure-based'' consent order under section 5(e)(1)(A)(ii)(II) wherein EPA determined that the PMN substance is expected to be produced in substantial quantities, there may be significant or substantial human exposure, and the substance may enter the environment in substantial quantities. That consent order requires submission of certain test data to EPA before the manufacturer may exceed a specified production volume. These SNURs designate as a ''significant new use'' the absence of the protective measures or exceedance of the production volume limit required in the consent orders.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA section 5(e) consent order usually requires, among other things, that potentially exposed employees must wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELs provisions in TSCA section 5(e) consent orders, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCELs provisions currently exist in 40 CFR part 721, subpart B for SNURs. Therefore, for these cases, the individual SNURs in subpart E will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under 40 CFR 721.30. Persons whose § 721.30 requests to use the NCELs approach for SNURs are approved by EPA will receive NCELs provisions comparable to those contained in the corresponding TSCA section 5(e) consent order for the same chemical substance.

This rule also includes SNURs on 52 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). EPA, however, does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a ''significant new use.'' These so-called ''Non-5(e) SNURs'' are promulgated pursuant to 40 CFR 721.170. EPA has determined that every activity designated as a ''significant new use'' in all non-5(e) SNURs issued under 40 CFR 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities: ''(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified'' for the PMN substance.

PMN Number P–00–552

Chemical name: Modified salicylic acid, zirconium complex (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a photocopying chemical. EPA has identified health and environmental concerns because the substance may be a persistent, bio-accumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 5,000. Also, based on test data on the PMN substance and analogous substances, EPA believes exposure to the PMN substance may cause systemic human health effects and toxicity to aquatic organisms. As described in the PMN, significant worker exposure is unlikely and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant adverse environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i), (b)(3)(ii), (b)(4)(i), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT Category would help characterize the PBT attributes of the PMN substance. EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. Fish testing should be performed with rainbow trout for a 90-day period. Daphnid testing should be performed for a 21-day period.

CFR citation: 40 CFR 721.10089.

PMN Number P–01–595

Chemical name: Tertiary amine salt of glycol succinate (generic).

CAS number: Not available.

Effective date of section 5(e) consent order: July 26, 2004.

Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as a pigment additive. The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order requires that the PMN substance be manufactured from specified feedstocks containing limited impurities. To ensure compliance, the consent order also requires that the feedstock is analyzed first at the time of initial commencement, then annually thereafter. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Toxicity concern: Based on test data on analogous anionic substances, the Agency has concerns for toxicity to aquatic organisms at concentrations that exceed 20 parts per billion (ppb) in surface waters. EPA predicts higher toxicity to aquatic organisms could occur if the PMN substance is manufactured with feedstocks other than specified in the PMN submission. A manufacturing process other than that specified in the PMN could produce a product which is resistant to microbial biodegradation, resistant to removal in

sewage treatment, and more persistent in the aquatic environment.
Recommended testing: EPA has determined that the results of a Zahn-Wellens/EMPA test (OPPTS 835.3200 test guideline); a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize possible effects of the PMN substance. The order does not require submission of the aforementioned information at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the chemical substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10090.
PMN Number P–02–135
Chemical name: 2(1H)-Pyrimidinone, tetrahydro-1,3-dimethyl-.
CAS number: 7226–23–5.
Basis for action: The PMN states that the substance will be used as an aprotic solvent and a catalyst. Based on test data on the PMN substance, EPA identified concerns for acute neurotoxicity, developmental toxicity and systemic effects to workers exposed dermally to the PMN substance. As described in the PMN, worker inhalation exposure is not expected and dermal exposure will be minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture, exceedence of the 20,000 kilogram annual import volume, use other than as described in the PMN, or use of the substance without the use of impervious gloves where there is a potential for dermal exposure, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a 90-day oral toxicity in rodents (OPPTS 870.3100 test guideline) and a reproduction and fertility effects test (OPPTS 870.3800 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10091.
PMN Number P–02–421
Chemical name: Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]undecyl]oxy]-, ammonium salt (1:1); Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]tridecyl]oxy]-, ammonium salt (1:1).
CAS numbers: 352661–91–7 and 224646–44–0.
Effective date of section 5(e) consent order: September 12, 2003.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as an emulsifier. The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order requires the company not to manufacture or import the PMN substance unless: (1) The mean number of moles of the ethoxy group is equal to or greater than 8 or (2) the average molecular weight is greater than 721 daltons. To ensure compliance, the consent order also requires that the substance is analyzed first at the time of initial commencement, then annually thereafter. The SNUR designates as a ''significant new use'' the absence of these protective measures.
Toxicity concern: Based on test data on analogous anionic surfactants, EPA predicts toxicity to aquatic organisms to occur at concentrations that exceed 3 ppb in surface waters. PMN substances with fewer ethoxy groups could have higher toxicity.
Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10092.
PMN Numbers P–03–12 and P–03–13
Chemical name: Alkylamides, ethoxylated (generic).
CAS number: Not available.
Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as surfactants. Based on test data on structurally similar aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 20 ppb in surface waters. As described in the amended PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); a fish acute toxicity test mitigated by humic acid (OPPTS 850.1085 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substances. All aquatic toxicity tests should use the static method and nominal concentrations. EPA recommends that only the PMN substance described in P–03–13 needs to be tested. The chloride salt of the PMN substance should be tested at pH 7. The fish acute toxicity test mitigated by humic acid should be done twice with 20 mg humic acid/liter and 10 mg humic acid/liter. Fish 96-hour LC50 values should be determined in the fish acute toxicity tests mitigated by humic acid. Dilution water hardness in the fish and daphnid toxicity tests should be less than 180 mg/liter as CaCO3. Dilution water and growth medium total organic carbon (TOC) concentrations should be measured just prior to testing and should be less than 2.0 mg TOC/liter. The TOC in the dilution water of the humic acid controls should be measured at the start of the tests and reported.

CFR citation: 40 CFR 721.10093.
PMN Number P–03–272
Chemical name: Decene, branched and linear.
CAS number: 833482–31–8.
Basis for action: The PMN states that the substance will be used as a chemical intermediate. Based on test data on structurally similar neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the

substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. All testing should be performed using the static method with measured concentrations in a closed vessel with no head space.
CFR citation: 40 CFR 721.10094.

PMN Number P–03–471

Chemical name: Oxetane, 3,3′-[oxybis(methylene)] bis[3-ethyl-.
CAS number: 18934–00–4.
Effective date of section 5(e) consent order: November 18, 2004.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance is an additive for industrial applications. The order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health. To protect against this risk, the consent order requires use of gloves demonstrated by testing to be impervious (Polyvinyl Alcohol gloves with a thickness of no less than 31.3 mils or Silvershield/4H sleeves with a thickness of no less than 2.7 mils have satisfied this requirement for up to 8 hours), a hazard communication program, and an aggregate production volume limit for manufacture or import. The SNUR designates as a ''significant new use'' the absence of these protective measures.

Toxicity concern: Based on a 28-day repeated dose study on the PMN substance, the Agency has concerns for male reproductive toxicity and systemic toxicity.
Recommended testing: EPA has determined that the results of a combined repeated dose toxicity study with a reproductive/developmental toxicity screening test (OPPTS 870.3650 test guideline) in rats by gavage would help characterize possible effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.10095.

PMN Number P–03–614

Chemical name: Benzene, 1,4-bis (methoxymethyl)-.
CAS number: 6770–38–3.
Effective date of section 5(e) consent order: April 21, 2004.
Basis for section 5(e) consent order: The PMN states that the generic (non-confidential) use of the substance will be as an electronic chemical. The exposure based 5(e) order was issued under section 5 (e)(1)(A)(i) and (e)(1)(A)(ii)(II) of TSCA based on a finding that the PMN substance is expected to be produced in substantial quantities, there may be significant or substantial human exposures, and the substance may enter the environment in substantial quantities. To protect against possible human health and environmental effects, the order requires submission of testing by a specified production volume.
Recommended testing: EPA has determined that the results of an acute oral toxicity test (OPPTS 870.1100 test guideline); a bacterial reverse mutation test (OPPTS 870.5100 test guideline); a mammalian erythrocyte micronucleus test (intraperitoneal route) (OPPTS 870.5395 test guideline); a repeated dose 28-day oral toxicity in rodents (OPPTS 870.3050 test guideline), including for all test doses a neurotoxicity functional observational battery, as described in OPPTS 870.6200 (test guideline); a fish acute toxicity test (OPPTS 850.1075 guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); and a ready biodegradability test (OPPTS 835.3110 test guideline) would help characterize possible human health and environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.10096.

PMN Numbers P–03–642 and P–03–643

Chemical names: (P–03–642) Disubstituted benzenesulfonic acid, alkali metal salt (generic) and (P–03–643) Disubstituted benzoic acid, alkali metal salt (generic).
CAS numbers: Not available.
Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as starting materials for the manufacture of agrochemicals. Based on test data on the PMN substances and structurally similar analogs, EPA has concerns for irritation and possible corrosion to eyes, mucous membranes and lungs, as well as concerns for liver and male reproductive system toxicity. As described in the PMNs, significant inhalation exposure is unlikely. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances other than as described in the PMNs may result in serious health effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that the results of a bacterial reverse mutation test (OPPTS 870.5100 test guideline); a mammalian erythrocyte micronucleus assay (OPPTS 870.5395 test guideline); a repeated dose 28-day oral toxicity study in rodents (OPPTS 870.3050 test guideline); an acute oral toxicity (OPPTS 870.1100 test guideline); and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help characterize the human health effects of the PMN substances. The prenatal developmental toxicity study should be performed on P–03–643, while all remaining tests should be performed on P–03–642.
CFR citations: 40 CFR 721.10097 (P–03–642) and 40 CFR 721.10098 (P–03–643).

PMN Numbers P–03–715 and P–03–716

Chemical names: (P–03–715) Dialkyl dimethyl ammonium carbonate (1:1) (generic) and (P–03–716) Dialkyl dimethyl ammonium carbonate (2:1) (generic).

CAS numbers: Not available.
Basis for action: The PMNs state that the substances will be used as metal treatment chemicals, and surfactants in hard surface cleaning applications. Based on test data on structurally similar substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb in surface waters. As described in the PMNs, releases of the PMN substances are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in surface water concentrations that exceed 5 ppb may

cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) and a porous pot test (OPPTS 835.3220 test guideline) would help characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10099 (P–03–715) and 40 CFR 721.10100 (P–03–716).
PMN Number P–03–755
Chemical name: Copolymer of alkyl acrylate and ethyleneglycol dimethacrylate (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive for paints and coatings. Based on test data for structurally similar polynonionic polymers, EPA has concerns for lung fibrosis if the substance is inhaled, due to its high molecular weight. As described in the PMN, worker inhalation exposure to the PMN substance will be minimal due to adequate personal protective equipment, and worker dermal exposure is not expected. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may cause significant adverse effects. EPA has determined, however, that domestic manufacture or where there is potential inhalation exposure without the use of a National Institute for Occupational Safety and Health (NIOSH)-approved respirator with an assigned protection factor (APF) of at least 10, may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) with a 60-day holding period in rats would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10101.
PMN Number P–04–126
Chemical name: Diphosphoric acid, compd. with piperazine (1:1).
CAS number: 66034–17–1.
Basis for action: The PMN states that the substance will be used as a flame retardant. Based on test data on analogous amines and inorganic phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb in surface waters. As described in the PMN, the substance is not released to surface water. Therefore, EPA has not determined that the proposed manufacturing or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. All tests should be performed using the static method with nominal concentrations.

CFR citation: 40 CFR 721.10102.
PMN Number P–04–235
Chemical name: Naphtha (Fischer-Tropsch), C4-11-alkane, branched and linear.

CAS number: 849101–58–2.
Basis for action: The PMN states that the substance will be used as an olefin manufacturing feed stock, specialty solvent, alcohol denaturant, and fuel blendstock. Based on test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb in surface waters. As described in the PMN, all waste streams containing the substance will be incinerated and not released to surface waters or landfilled. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that disposal of the substance without incineration may result in release to surface waters and cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. Testing should be performed using the static method with measured concentrations in a closed vessel with no head space.
CFR citation: 40 CFR 721.10103.
PMN Number P–04–254
Chemical name: Halophosphate mixed metal complex (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coating additive. Based on test data on structurally similar substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 10 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or uses of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters at concentrations that exceed 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed using the flow-through method with measured concentrations. The algae test should be performed using the static method with measured concentrations.
CFR citation: 40 CFR 721.10104.
PMN Number P–04–417
Chemical name: Polyfluoroalkylether (generic).

CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as source material for coating plastic parts. Based on test data on structurally similar chemicals, EPA has concerns for lung toxicity if the substance is inhaled, due to its reactivity with lung membranes. As described in the PMN, dermal and inhalation exposures to workers are not

expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that the use of the PMN substance involving an application method that generates a vapor, mist, or aerosol may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity (OPPTS 870.3465 test guideline) with a 60-day holding period would help characterize the health effects of the substance.
CFR citation: 40 CFR 721.10105.

PMN Number P–04–419

Chemical name: Silica, [(ethenylsilylidyne)tris(oxy)] - modified.
CAS number: 649574–37–8.
Basis for action: The PMN states that the substance will be used as filler. Based on test data on analogous crystalline silica and other high molecular weight polymers, EPA has concerns for lung toxicity, lung overload, and cancer. As described in the PMN, significant worker inhalation exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that manufacture, processing, or use of the substance in a powder form may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) in rats with special attention to histopathology (inflammation and cell proliferation) of the lung tissues and to various parameters of the bronchoalveolar lavage fluid (BALF) with a recovery period of 60 days; and a carcinogenicity test (OPPTS 870.4200 test guideline) in rats would help characterize the human health concerns of the PMN substance.
CFR citation: 40 CFR 721.10106.

PMN Number P–04–495

Chemical name: Naphthalenedisulfonic acid, [amino-hydroxy-[(substituted)azo-sulfo-naphthaleneyl]azo]-hydroxy-[(methoxy-sulfophenyl)azo], metal salt (generic).

CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dye. Based on test data on structurally similar beta-N-substituted naphthalene-based azo reduction products, EPA has concerns for carcinogenicity, mutagenicity, and developmental toxicity from exposure to the PMN substance. As described in the PMN, the substance is imported so domestic worker exposure is not expected. Although there is potential for short-term, infrequent consumer dermal exposure, based on physical-chemical properties of the PMN substance, dermal absorption of the intact dye is not expected. Therefore, EPA has not determined that the proposed importation or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacturing, or use other than that listed in the PMN, could result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that the results of a bacterial reverse mutation test (OPPTS 870.5100 test guideline) with the Prival modification and a concurrent positive control; and an unscheduled DNA synthesis in mammalian cells in culture (OPPTS 870.5550 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10107.

PMN Number P–04–498

Chemical name: Naphthalenedisulfonic acid, hydrozy-[[[(hydroxyl-disulfo-naphthaleneyl)azo]-alkyl(C=1-5)-(sulfoalkoxy)cyclic]azo]-substituted azo-, metal salt (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dye. Based on test data on structurally similar beta-N-substituted naphthalene-based azo reduction products, EPA has concerns for carcinogenicity, mutagenicity, and developmental toxicity from exposure to the PMN substance. As described in the PMN, the substance is imported so domestic worker exposure is not expected. Although there is potential for short-term, infrequent consumer dermal exposure, based on physical-chemical properties of the PMN substance, dermal absorption of the intact dye is not expected. Therefore, EPA has not determined that the proposed importation or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacturing, or use other than that listed in the PMN, could result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that the results of a bacterial reverse mutation test (OPPTS 870.5100 test guideline) with the Prival modification with a concurrent positive control; and an unscheduled DNA synthesis in mammalian cells in culture (OPPTS 870.5550 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10108.

PMN Numbers P–04–508, P–04–509, and P–04–510

Chemical names: (P–04–508) Hexanoic acid, 2-ethyl-, mixed triesters with benzoic acid and trimethylolpropane; (P–04–509) Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and neopentyl glycol; and (P–04–510) Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and diethylene glycol.
CAS numbers: (P–04–508) 610787–76–3; (P–04–509) 610787–77–4; and (P–04–510) 610787–78–5.
Basis for action: The PMNs state that the substances will be used as plasticizers for products manufactured from polyvinyl chloride (PVC). Based on test data on structurally similar esters, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb in surface waters. Based on test data on the PMN substance, EPA has concerns for liver toxicity, reproductive toxicity, developmental toxicity, and a marginal concern for cancer. Also, if any diethylene glycol is released from ester hydrolysis of P–04–510, there is concern for acute poisoning (lethality) at high doses. As described in the PMNs, the substances are not be released to surface waters and worker inhalation and dermal exposures are not of concern. Consumer exposure to the PMN substances are not expected as the substances are compounded with other nonvolatile substances and are not expected to volatilize, leach, or otherwise be separated from the final product under normal conditions of use. Therefore, EPA has not determined that the proposed import, processing, or use of the substances may present an unreasonable risk to human health or the environment. EPA has determined, however, that domestic manufacture or any other uses resulting in release of the substances to surface waters may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substances meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), and (b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)); a daphnid chronic toxicity test (OPPTS

850.1300 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); a Zahn-Wellens/EMPA test (OPPTS 835.3200 test guideline); a fish BCF (OPPTS 850.1730 test guideline (public draft)); and a reproduction/developmental toxicity screening test (OPPTS 870.3550 test guideline) would help characterize the environmental effects, environmental fate, and human health effects of the PMN substances. Testing for P–04–508, P–04–509, and P–04–510 should be tiered. Testing should first be completed on P–04–510. If the results indicate toxicity, then the testing should be repeated for P–04–509. If the results for P–04–509 indicate toxicity, then the testing should be repeated for P–04–508.

CFR citations: 40 CFR 721.10109 (P–04–508), 40 CFR 721.10110 (P–04–509); and 40 CFR 721.10111 (P–04–510).

PMN Number P–04–530

Chemical name: Ethanone, 2-chloro-1-(1-chlorocyclopropyl)-.

CAS number: 120983–72–4.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on test data on the PMN substance, EPA has human health concerns for mutagenicity, acute toxicity, systemic toxicity (liver and kidney effects), lung toxicity, and dermal sensitization. Based on test data on structural analogs, EPA has health concerns for reproductive toxicity and systemic toxicity (cardiotoxicity and spleen effects). In addition, there is concern for carcinogenicity based on the results of the mutagenicity studies and the potential for the chemical to be an alkylating agent. Based on test data on structurally similar alpha-halo ketones, EPA predicts toxicity to aquatic organisms at concentrations that exceed 1 ppb in surface waters. Since significant worker dermal and inhalation exposure is unlikely for the use described in the PMN due to adequate personal protective equipment and engineering controls, and since significant general population and environmental exposure is unlikely as the substance is not released to surface waters, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate or other uses of the substance resulting in release of the PMN substance to surface water may cause serious health effects or significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)) and a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. These tests should be performed using the flow-through method with measured concentrations. EPA also has determined that the results of the following test would characterize the human health effects of the PMN substance: Combined repeated dose toxicity study with the reproduction/developmental screening (OPPTS 870.3650 test guideline).

CFR citation: 40 CFR 721.10112.

PMN Number P–04–547

Chemical name: Thioether epoxy (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an epoxy monomer. Based on test data on structurally similar epoxides, EPA has health concerns for carcinogenicity, mutagenicity, sensitization, male reproductive effects, and severe irritation to all exposed tissues. As described in the PMN, significant worker exposure is unlikely, as dermal exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk of injury to human health. EPA has determined, however, that use other than that listed in the PMN could result in serious health effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii). Also, based on structural analogy to epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 30 ppb in surface waters. As described in the PMN, the substance is not released to water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk of injury to the environment. EPA has determined, however, that any other uses of the substance resulting in release of the PMN substance to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline); a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); and a ready biodegradability study (OPPTS 835.3110 test guideline) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10113.

PMN Numbers P–04–578, P–04–579, P–04–580, P–04–581, P–04–582, and–P–04–583

Chemical name: Polyhydroxyaminoether salts (generic).

CAS number: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be for coated plastic bottle and film. Based on test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb in surface waters. As described in the PMNs, the substances are not released into surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any other uses resulting in release of the PMN substances to surface water may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substances. Any of the consolidated chemicals may be used to conduct the testing. All studies should be performed using the static method with nominal concentrations.

CFR citation: 40 CFR 721.10114.

PMN Number P–04–625

Chemical name: 1-Hexadecanaminium, N,N-dibutyl-N-(2-hydroxyethyl)-, bromide (1:1).

CAS number: 160653–08–7.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a crude oil additive for downhole applications. Based on test data on structurally similar substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any other uses of the substance resulting in release of the PMN substance to surface water may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. All studies should be performed using the static method with nominal concentrations.

CFR citation: 40 CFR 721.10115.

PMN Number P–04–758

Chemical name: Blocked polymeric isocyanate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coating. Based on test data on analogous small and medium molecular-weight isocyanates, EPA has concerns for pulmonary sensitization and mutagenicity for the PMN material. As described in the PMN, significant worker exposure is unlikely, as neither dermal nor inhalation exposure is expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the PMN substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) with a 60-day holding period would help characterize the health effects of the substance.

CFR citation: 40 CFR 721.10116.

PMN Number P–04–776

Chemical name: Heteromonocyclo-beta-(2,4-dichlorophenyl)-1-propanol (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an industrial intermediate. Based on test data on structurally analogous chemicals, EPA expects toxicity to aquatic organisms at surface water concentrations that exceed 100 ppb in surface waters. Also, based on test data on the PMN substance, EPA has concerns for liver toxicity and effects on the lungs, kidneys, and the GI tract. In addition, based on test data on structurally analogous chemicals, EPA has concerns for developmental toxicity. As described in the PMN, environmental releases are not expected as the substance is not released to surface waters. Although there is potential for inhalation and dermal exposures from use, based on analog data, the margin of exposure (MOE) of 100 is considered adequate. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any other uses of the substance resulting in release of the PMN substance to surface waters may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)); a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) in rats would help characterize the human health and environmental effects of the PMN substance. All ecotox studies should be performed using the flow-through method with measured concentrations.

CFR citation: 40 CFR 721.10117.

PMN Number P–05–35

Chemical name: Substituted aryl acetonitrile (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on test data on analogous nitriles, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb in surface waters. As described in the PMN, the substance is not released into surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphnid tests should be performed using the flow thorough method with measured concentrations. The algal test should be preformed using the static method with measured concentrations.

CFR citation: 40 CFR 721.10118.

PMN Number P–05–673

Chemical name: Siloxane modified silica nanoparticles (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive. Based on test data on analogous respirable, poorly soluble, particulates, EPA has concerns for lung effects for the PMN substance. Based on physical properties, EPA has concerns for potential systemic effects from dermal exposure to the PMN substance. As described in the PMN, dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use without impervious gloves or a NIOSH-approved respirator with an APF of at least 10; the manufacture, process, or use of the substance as a powder; or uses of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10119.

PMN Number P–05–687

Chemical name: Siloxane modified alumina nanoparticles (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive. Based on test data on analogous respirable, poorly soluble, particulates, EPA has concerns for lung effects for the PMN substance. Based on physical properties, EPA has concerns for potential systemic effects from inhalation and dermal exposure to the PMN substance. As described in the PMN, worker inhalation exposure to the PMN substance will be minimal due to adequate personal protective equipment, and worker dermal exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use without impervious gloves or a NIOSH-approved respirator with an APF of at least 10; the manufacture, process or use of the substance as a powder; or uses of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10120.

PMN Number P–05–766

Chemical name: Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-methyl-.omega.-(4-nonylphenoxy)-, branched.

CAS number: 858944–25–9.

Basis for action: The PMN states that the generic (non-confidential use) of the substance will be as a polyalkylene glycol lubricant basefluid and additive. Based on test data on structurally similar chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS 850.1400 test guideline (public draft)); a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphnid testing should be performed using the flow-through method with measured concentrations. The algal testing should be performed using the static method with measured concentrations.

CFR citation: 40 CFR 721.10121.

PMN Number P–06–151

Chemical name: 2-Propenoic acid, 2-methyl-, 1,1′-[2-ethyl-2-[[(2-methyl-1-oxo-2-propen-1-yl)oxy]methyl]- 1,3-propanediyl] ester, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-methyl-2-propenoate.

CAS number: 849925–18–4.

Basis for action: The PMN states that the substance will be used as an additive in rubber, i.e. as a reinforcing agent. Based on test data on analogous respirable, poorly soluble, particulates, EPA has concerns for lung effects for the PMN substance. Based on physical properties, EPA has concerns for potential systemic effects from dermal exposure to the PMN substance. As described in the PMN, significant worker exposure is unlikely, as dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) with a 60 day holding period would help characterize the human health effects of the PMN substance. This study should include observation of the entire body, rather than just the lungs.

CFR citation: 40 CFR 721.10122.

PMN Number P–06–554

Chemical name: [1,2,4-Triazolo[1,5-a]pyrimidin-2-amine, 5,7-dimethoxy-].

CAS number: 13223–43–3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a process intermediate. Based on test data on structurally similar substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in surface water concentrations that exceed 5 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)) using the flow-through method with measured concentrations would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10123.

PMN Number P–06–617

Chemical name: Brominated polyaromatic compound (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on test data on polybrominated diphenyls and polybrominated diphenylethers, the Agency identified human health concerns for liver and kidney toxicity, mutagenicity, carcinogenicity, developmental toxicity, neurotoxicity, reproductive toxicity, and possible chloracne from inhalation or dermal exposure to the PMN substance. In addition, EPA has identified health and environmental concerns because the substance may be a persistent, bio-accumulative, and toxic (PBT) chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemical Program's PBT category (64 FR 60194; November 4, 1999). EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. As described in the PMN, significant worker exposure is unlikely due to adequate dermal protection and negligible inhalation exposure, and environmental exposure is unlikely as the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the PMN substance without

the use of impervious gloves, any use of the PMN substance other than as an intermediate, or any predictable or purposeful release containing the PMN substance into the waters of the United States may cause serious health effects and significant adverse environmental effects, since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of tiered testing as described in the New Chemicals Program's PBT Category (64 FR 60194; November 4, 1999); a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); an acute oral toxicity (OPPTS 870.1100 test guideline); a bacterial reverse mutation test (OPPTS 870.5100 test guideline); a mammalian erythrocyte micronucleus test by the intraperitoneal route (OPPTS 870.5395 test guideline); a 90-day oral toxicity test in rodents (OPPTS 870.3100 test guideline); and a prenatal developmental toxicity study (OPPTS 870.3700 test guideline) would help characterize the PBT, health, and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10124.

PMN Numbers P–06–665, P–06–666, P–06–667, P–06–668, P–06–669, and P–06–670

Chemical name: Alkenedioic acid, dialkyl ester, reaction products with polyaminocarbomonocycle and alkenoic acid alkyl ester (generic).

CAS number: Not available.

Basis for action: The consolidated PMN states that the generic (non-confidential) use of the substances will be as a component of an automotive coating. Based on test data on analogous chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb in surface waters. As described in the consolidated PMN, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); and a ready biodegradability test (OPPTS 835.3100 test guideline) would help characterize the environmental effects of the PMN substances. The fish and daphnid tests should be performed using the flow-through method with measured concentrations. The algal test should be performed using the static method with measured concentrations. The fish, daphnid, and algal studies should be conducted with a stock solution neutralized to pH 7 by HCl.

CFR citation: 40 CFR 721.10125.

PMN Number P–06–689

Chemical name: Alkyl amino substituted triazine amino substituted benezenesulfonic acid reaction product with naphthalenesulfonato azo substituted phenyl azo substituted benzenesulfonic acid copper compound (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a dye for cellulosic fabric. Based on test data on analogous substances, EPA has concerns for carcinogenicity and mutagenicity for the PMN substance. As described in the PMN, significant worker exposure is unlikely, as dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the PMN substance may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a bacterial reverse mutation test with the Prival modification (OPPTS 870.5100 test guideline); a mammalian erythrocyte micronucleus test in mice through the oral route of exposure (OPPTS 870.5395 test guideline); and a carcinogenicity test (OPPTS 870.4200 test guideline) pending positive results on either of the first two tests would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10126.

PMN Number P–06–693

Chemical name: Alkenyl dimethyl betaine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a crude oil production chemical. Based on test data on structurally similar analogs, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 50 ppb in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 50 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in surface water concentrations that exceed 50 ppb which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10127.

PMN Number P–06–752

Chemical name: Modified imidazole (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adhesive for electrical parts. Based on test data for imidazoles and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS 850.1075 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft)); an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)); and a ready biodegradability test (OPPTS 835.3110 test guideline) would help characterize the environmental effects of the PMN substance. The fish and daphnid testing should be performed using the flow-through method with measured concentrations. The algal testing should be conducted using the static method with measured concentrations.
CFR citation: 40 CFR 721.10128.

PMN Number P–07–24

Chemical name: Alkylamine ethoxylated (generic).
CAS number: Not available.
Basis for action: The PMN states that the use of the substance will be as an emulsifier for oilfield application. Based on test data on the PMN substance and on structurally similar analogs, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 3 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in surface water concentrations that exceed 3 ppb which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS 835.3110 test guideline); a fish acute toxicity test (OPPTS 850.1075 test guideline (public draft)); a fish acute toxicity test mitigated by humic acid (OPPTS 850.1085 test guideline (public draft)); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS 850.1010 test guideline (public draft));and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The ready biodegradability test should be conducted first. The results of this test may mitigate the need for further testing. For the fish, daphnid and algal testing, the substance should be tested as the chloride salt at pH 7.
CFR citation: 40 CFR 721.10129.

PMN Number P–07–140

Chemical name: Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-ar-[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-, monosodium salt (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of this substance will be as a colorant raw material. Based on test data on analogous respirable, poorly soluble, particulates, EPA predicts the PMN substance may cause lung effects. As described in the PMN, significant worker exposure is unlikely, as dermal exposure is not expected and significant inhalation exposure to the PMN substance is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS 870.3465 test guideline) with observations for a cancer potential would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10130.

PMN Number P–07–205

Chemical name: Isononanamide, N-(2-ethylhexyl)-.
CAS number: 93820–33–8.
Basis for action: The PMN states that the use of the substance will be as a defoamer for cement additives in oilfield applications. Based on test data on the PMN substance and on structurally similar analogous neutral organic compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb in surface waters. For the use described in the PMN, releases of the PMN substance to surface waters are not expected to result in concentrations exceeding 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in surface water concentrations that exceed 1 ppb which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish early life-stage toxicity test (OPPTS 850.1400 test guideline (public draft)); a daphnid chronic toxicity test (OPPTS 850.1300 test guideline (public draft)); and an algal toxicity test, tiers I and II (OPPTS 850.5400 test guideline (public draft)) would help characterize the environmental effects of the PMN substance. The fish and daphnid testing should be performed using the flow-through method with measured concentrations. The algal testing should be performed using the static method with measured concentrations.
CFR citation: 40 CFR 721.10131.

PMN Number P–07–269

Chemical name: Phosphoramidic acid, carbomonocyclic-, diphenylester (generic).

CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a flame-resisting material used in cars. Based on test data on the PMN substance, EPA has concerns for liver toxicity in humans for the PMN material. Also, based on test data on analogous triphenyl phosphates, EPA believes the PMN substance may cause delayed neurotoxicity in humans. As described in the PMN, significant worker or consumer exposure is unlikely, as dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, increased importation or production volumes, or uses other than as described in the PMN may result in increased exposure to the PMN substance which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (b)(3)(ii).
Recommended testing: EPA has determined that the results of a 90-day oral toxicity study in rodents (OPPTS 870.3100 test guideline) via the oral-gavage route and an acute and 28-day delayed neurotoxicity of organophosphorus substances study (OPPTS 870.6100 test guideline) in hens would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10132.

PMN Number P–07–401

Chemical name: 2-Propenoic acid, 2-methyl, 2-hydroxyethyl ester, homopolymer.

CAS number: 25249–16–5.
Basis for action: The PMN states that the generic (non-confidential) use of the

substance will be as a matrix for an analysis device. Based on test data on analogous high molecular weight polymers, the PMN substance may cause lung toxicity and cancer. As described in the PMN, worker inhalation exposure will be minimal due to adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN, use without workers wearing a NIOSH-approved respirator with an assigned protection factor (APF) of 1,000 or greater, or use without an appropriate hazard communication program may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity study (OPPTS 870.3465 test guideline) with a 60-day holding period would help characterize the health effects of the PMN substance.

CFR citation: 40 CFR 721.10133.

IV. Objectives and Rationale of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 4 of the 56 chemical substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit III. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these chemical substances listed in this document are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to 40 CFR 721.160.

In the other 52 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met, as discussed in Unit III.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

1. EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.

3. EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

4. EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/newchems/pubs/invntory.htm*.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4)(B). In accordance with 40 CFR 721.160(c)(3)(ii) and 721.170(d)(4)(i)(B), this rule will be effective [*January 5, 2009*], unless EPA receives a written notice by [*December 5, 2008*] of adverse or critical comments, or notice of intent to submit adverse or critical comments, on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific chemical substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific chemical substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit III. lists those tests. Unit III. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Many test guidelines are now available on the Internet at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.

2. Potential benefits of the chemical substances.

3. Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the chemical substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs that include specific significant new uses that are CBI.

A manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure in § 721.1725(b)(1), a manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer, importer, or processor is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e., it is below the level that would be a significant new use, that person can manufacture, import, or process the chemical substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture, import, or process the chemical substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same chemical substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 4 chemical substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the TSCA Inventory prior to the effective date of the rule, the chemical substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 38 of the 56 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per 40 CFR 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing. EPA solicits comments on whether any of the uses described as significant new uses are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

IX. SNUN Submissions

EPA recommends that submitters consult with the Agency prior to submitting a SNUN to discuss what data may be useful in evaluating a significant new use. Discussions with the Agency prior to submission can afford ample time to conduct any tests that might be helpful in evaluating risks posed by the substance. According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50.

SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see 40 CFR 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete

economic analysis is available in the public docket.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that proposed or final SNURs are not a ''significant regulatory action'' subject to review by OMB, because they do not meet the criteria in section 3(f) of the Executive order.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2005–2007, none appear to be from small entities. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.), are minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 18, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

L. Executive Order 12988

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a final rule may take effect, the agency promulgating it must submit a final rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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 final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 30, 2008.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.10089 to subpart E to read as follows:

§ 721.10089 Modified salicylic acid, zirconium complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified salicylic acid, zirconium complex (PMN P–00–552) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.10090 to subpart E to read as follows:

§ 721.10090 Tertiary amine salt of glycol succinate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as tertiary amine salt of glycol succinate (PMN P–01–595) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(A) Restricting the manufacture of the PMN substance with only those feedstocks specified in the PMN submission.

(B) Manufacture, import, or processing of the PMN substance without analyzing representative samples of the chemical substance to determine compliance with the requirements in § 721.10090(a)(2)(i)(A). To ensure compliance, the PMN substance must be analyzed (1) at the time of initial commencement of non-exempt commercial manufacture of the chemical substance, and (2) at least annually thereafter during every year in which the substance is manufactured.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 4. By adding new § 721.10091 to subpart E to read as follows:

§ 721.10091 2(1H)-Pyrimidinone, tetrahydro-1,3-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2(1H)-pyrimidinone, tetrahydro-1,3-dimethyl- (PMN P–02–135; CAS No. 7226–23–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3)(i), (b), and (c). Best's Viton model #890, Best's Butyl model #874, and Best's Butyl #878 have been demonstrated to satisfy § 721.63(a)(3)(i). Other demonstrated impervious gloves that satisfy § 721.63(a)(3)(i) are permissible.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f), (j) (aprotic solvent and catalyst), and (s) (20,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 5. By adding new § 721.10092 to subpart E to read as follows:

§ 721.10092 Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]undecyl]oxy]-, ammonium salt (1:1); Poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]tridecyl]oxy]-, ammonium salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]undecyl]oxy]-, ammonium salt (1:1); poly(oxy-1,2-ethanediyl), .alpha.-sulfo-.omega.-[[1-[(2-propen-1-yloxy)methyl]tridecyl]oxy]-, ammonium salt (1:1) (PMN P–02–421; CAS Nos. 352661–91–7 and 224646–44–0) is

subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (no manufacture or import of the PMN substance unless: (1) The mean number of moles of the ethoxy group is equal to or greater than 8 or (2) the average molecular weight is greater than 721 daltons). Representative samples of the PMN substance must be analyzed and determined to comply with these requirements both at the time of initial commencement and annually thereafter.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 6. By adding new § 721.10093 to subpart E to read as follows:

§ 721.10093 Alkylamides, ethoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkylamides, ethoxylated (PMNs P–03–12 and P–03–13) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 7. By adding new § 721.10094 to subpart E to read as follows:

§ 721.10094 Decene, branched and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as decene, branched and linear (PMN P–03–272; CAS No. 833482–31–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 8. By adding new § 721.10095 to subpart E to read as follows:

§ 721.10095 Oxetane, 3,3′-[oxybis(methylene)] bis[3-ethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as oxetane, 3,3′-[oxybis(methylene)] bis[3-ethyl- (PMN P–03–471; CAS No. 18934–00–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), and (a)(3) (polyvinyl alcohol gloves with a thickness of no less than 31.3 mils or silvershield/4H sleeves with a thickness of no less than 2.7 mils have satisfied § 721.63(a)(3)(i) for up to 8 hours.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e), (f), (g)(1)(iv), (g)(1)(v), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 9. By adding new § 721.10096 to subpart E to read as follows:

§ 721.10096 Benzene, 1,4-bis (methoxymethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzene, 1,4-bis (methoxymethyl)- (PMN P–03–614; CAS No. 6770–38–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 10. By adding new § 721.10097 to subpart E to read as follows:

§ 721.10097 Disubstituted benzenesulfonic acid, alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted benzenesulfonic acid, alkali metal salt (PMN P–03–642) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 11. By adding new § 721.10098 to subpart E to read as follows:

§ 721.10098 Disubstituted benzoic acid, alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted benzoic acid, alkali metal salt (PMN P–03–643) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 12. By adding new § 721.10099 to subpart E to read as follows:

§ 721.10099 Dialkyl dimethyl ammonium carbonate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkyl dimethyl ammonium carbonate (1:1) (PMN P–03–715) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 5).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 13. By adding new § 721.10100 to subpart E to read as follows:

§ 721.10100 Dialkyl dimethyl ammonium carbonate (2:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkyl dimethyl ammonium carbonate (2:1) (PMN P–03–716) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 5).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 14. By adding new § 721.10101 to subpart E to read as follows:

§ 721.10101 Copolymer of alkyl acrylate and ethyleneglycol dimethacrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as copolymer of alkyl acrylate and ethyleneglycol dimethacrylate (PMN P–03–755) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5), (a)(6)(i), (a)(6)(ii), (b), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an assigned protection factor (APF) of 10-25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters (either half- or full-face); powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; and supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half- or full-face).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 15. By adding new § 721.10102 to subpart E to read as follows:

§ 721.10102 Diphosphoric acid, compd. with piperazine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as diphosphoric acid, compd. with piperazine (1:1) (PMN P–04–126; CAS No. 66034–17–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (flame retardant).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 16. By adding new § 721.10103 to subpart E to read as follows:

§ 721.10103 Naphtha (Fischer-Tropsch), C4-11-alkane, branched and linear.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as naphtha (fischer-tropsch), C4-11-alkane, branched and linear (PMN P–04–235; CAS No. 849101–58–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1) and (c)(1).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (j), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 17. By adding new § 721.10104 to subpart E to read as follows:

§ 721.10104 Halophosphate mixed metal complex (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halophosphate mixed metal complex (PMN P–04–254) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 18. By adding new § 721.10105 to subpart E to read as follows:

§ 721.10105 Polyfluoroalkylether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyfluoroalkylether (PMN P–04–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 19. By adding new § 721.10106 to subpart E to read as follows:

§ 721.10106 Silica , [(ethenylsilylidyne)tris(oxy)] - modified.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as silica , [(ethenylsilylidyne)tris(oxy)] - modified (PMN P–04–419; CAS No. 649574–37–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 20. By adding new § 721.10107 to subpart E to read as follows:

§ 721.10107 Naphthalenedisulfonic acid, [amino-hydroxy-[(substituted)azo-sulfo-naphthaleneyl]azo]-hydroxy-[(methoxy-sulfophenyl)azo], metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as naphthalenedisulfonic acid, [amino-hydroxy-[(substituted)azo-sulfo-naphthaleneyl]azo]-hydroxy-[(methoxy-sulfophenyl)azo], metal salt (PMN P–04–495) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 21. By adding new § 721.10108 to subpart E to read as follows:

§ 721.10108 Naphthalenedisulfonic acid, hydrozy-[[[(hydroxyl-disulfo-naphthaleneyl)azo]-alkyl(C=1-5)-(sulfoalkoxy)cyclic]azo]-substituted azo-, metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as naphthalenedisulfonic acid, hydrozy-[[[(hydroxyl-disulfo-naphthaleneyl)azo]-alkyl(C=1-5)-(sulfoalkoxy)cyclic]azo]-substituted azo-, metal salt (PMN P–04–498) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 22. By adding new § 721.10109 to subpart E to read as follows:

§ 721.10109 Hexanoic acid, 2-ethyl-, mixed triesters with benzoic acid and trimethylolpropane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hexanoic acid, 2-ethyl-, mixed triesters with benzoic acid and trimethylolpropane (PMN P–04–508; CAS No. 610787–76–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Record keeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 23. By adding new § 721.10110 to subpart E to read as follows:

§ 721.10110 Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and neopentlyl glycol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and neopentlyl glycol (PMN P–04–509; CAS No. 610787–77–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 24. By adding new § 721.10111 to subpart E to read as follows:

§ 721.10111 Hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and diethylene glycol.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hexanoic acid, 2-ethyl-, mixed diesters with benzoic acid and diethylene glycol (PMN P–04–510; CAS No. 610787–78–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 25. By adding new § 721.10112 to subpart E to read as follows:

§ 721.10112 Ethanone, 2-chloro-1-(1-chlorocyclopropyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanone, 2-chloro-1-(1-chlorocyclopropyl)- (PMN P–04–530; CAS No. 120983–72–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 26. By adding new § 721.10113 to subpart E to read as follows:

§ 721.10113 Thioether epoxy (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as thioether epoxy (PMN P–04–547) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 27. By adding new § 721.10114 to subpart E to read as follows:

§ 721.10114 Polyhydroxyaminoether salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as polyhydroxyaminoether salts (PMNs P–04–578, P–04–579, P–04–580, P–04–581, P–04–582, and-P–04–583) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of those substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 28. By adding new § 721.10115 to subpart E to read as follows:

§ 721.10115 1-Hexadecanaminium, N,N-dibutyl-N-(2-hydroxyethyl)-, bromide (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-hexadecanaminium, N,N-dibutyl-N-(2-hydroxyethyl)-, bromide (1:1) (PMN P–04–625; CAS No. 160653–08–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to

manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 29. By adding new § 721.10116 to subpart E to read as follows:

§ 721.10116 Blocked polymeric isocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as blocked polymeric isocyanate (PMN P–04–758) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 30. By adding new § 721.10117 to subpart E to read as follows:

§ 721.10117 Heteromonocyclo-beta-(2,4-dichlorophenyl) -1-propanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heteromonocyclo-beta-(2,4-dichlorophenyl) -1-propanol (PMN P–04–776) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 31. By adding new § 721.10118 to subpart E to read as follows:

§ 721.10118 Substituted aryl acetonitrile (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted aryl acetonitrile (PMN P–05–35) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 32. By adding new § 721.10119 to subpart E to read as follows:

§ 721.10119 Siloxane modified silica nanoparticles (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as siloxane modified silica nanoparticles (PMN P–05–673) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (a)(6)(ii), (b) (concentration set at 1 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an APF of 10-25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters (either half- or full-face); powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half- or full-face).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j), (v)(1), (w)(1), and (x)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 33. By adding new § 721.10120 to subpart E to read as follows:

§ 721.10120 Siloxane modified alumina nanoparticles (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as siloxane modified alumina nanoparticles (PMN P–05–687) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (a)(6)(ii), (b) (concentration set at 1 percent), and (c). The following National Institute for Occupational Safety and Health (NIOSH)-approved respirators with an APF of 10-25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters (either half- or full-face); powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half- or full-face).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j), (v)(1), (w)(1), and (x)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 34. By adding new § 721.10121 to subpart E to read as follows:

§ 721.10121 Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-methyl-.omega.-(4-nonylphenoxy)-, branched.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly[oxy(methyl-1,2-ethanediyl)], .alpha.-methyl-.omega.-(4-nonylphenoxy)-, branched (PMN P–05–766; CAS No. 858944–25–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 35. By adding new § 721.10122 to subpart E to read as follows:

§ 721.10122 2-Propenoic acid, 2-methyl-, 1,1′-[2-ethyl-2-[[(2-methyl-1-oxo-2-propen-1-yl)oxy]methyl]- 1,3-propanediyl] ester, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-methyl-2-propenoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, 1,1′-[2-ethyl-2-[[(2-methyl-1-oxo-2-propen-1-yl)oxy]methyl]- 1,3-propanediyl] ester, polymer with 1,3-butadiene, ethenylbenzene and 2-hydroxyethyl 2-methyl-2-propenoate (PMN P–06–151; CAS No. 849925–18–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (additive in rubber, i.e. as reinforcing agent; additive in plastics, i.e. as polymeric plasticizer; and additive in polyurethane, i.e. to improve low temperature flexibility).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 36. By adding new § 721.10123 to subpart E to read as follows:

§ 721.10123 [1,2,4-Triazolo[1,5-a]pyrimidin-2-amine, 5,7-dimethoxy-].

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as [1,2,4-triazolo[1,5-a]pyrimidin-2-amine, 5,7-dimethoxy-] (PMN P–06–554; CAS No. 13223–43–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 5).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 37. By adding new § 721.10124 to subpart E to read as follows:

§ 721.10124 Brominated polyaromatic compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated polyaromatic compound (PMN P–06–617) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Impervious gloves: Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(iii) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 38. By adding new § 721.10125 to subpart E to read as follows:

§ 721.10125 Alkenedioic acid, dialkyl ester, reaction products with polyaminocarbomonocycle and alkenoic acid alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkenedioic acid, dialkyl ester, reaction products with polyaminocarbomonocycle and alkenoic acid alkyl ester (PMNs P–06–665, P–06–666, P–06–667, P–06–668, P–06–669, and P–06–670) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 39. By adding new § 721.10126 to subpart E to read as follows:

§ 721.10126 Alkyl amino substituted triazine amino substituted benezenesulfonic acid reaction product with naphthalenesulfonato azo substituted phenyl azo substituted benzenesulfonic acid copper compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl amino substituted

triazine amino substituted benezenesulfonic acid reaction product with naphthalenesulfonato azo substituted phenyl azo substituted benzenesulfonic acid copper compound (PMN P–06–689) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 40. By adding new § 721.10127 to subpart E to read as follows:

§ 721.10127 Alkenyl dimethyl betaine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenyl dimethyl betaine (PMN P–06–693) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 41. By adding new § 721.10128 to subpart E to read as follows:

§ 721.10128 Modified imidazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as modified imidazole (PMN P–06–752) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 42. By adding new § 721.10129 to subpart E to read as follows:

§ 721.10129 Alkylamine ethoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylamine ethoxylated (PMN P–07–24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (emulsifier for oilfield application).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 43. By adding new § 721.10130 to subpart E to read as follows:

§ 721.10130 Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-ar-[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-, monosodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-ar-[4-[[2-(sulfooxy)ethyl]substituted]phenyl]-, monosodium salt (PMN P–07–140) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 44. By adding new § 721.10131 to subpart E to read as follows:

§ 721.10131 Isononanamide, N-(2-ethylhexyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as isononanamide, N-(2-ethylhexyl)- (PMN P–07–205: CAS No. 93820–33–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (defoamer for cement additives in oilfield applications).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 45. By adding new § 721.10132 to subpart E to read as follows:

§ 721.10132 Phosphoramidic acid, carbomonocyclic-, diphenylester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphoramidic acid, carbomonocyclic-, diphenylester (PMN P–07–269) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j) and (s) (100,000 kilograms).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 46. By adding new § 721.10133 to subpart E to read as follows:

§ 721.10133 2-Propenoic acid, 2-methyl, 2-hydroxyethyl ester, homopolymer.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl, 2-hydroxyethyl ester, homopolymer (PMN P–07–401; CAS No. 25249–16–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5), (a)(6), (b), and (c). Respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 1,000. A NIOSH-certified supplied-air respirator operated in pressure demand or other positive pressure mode and equipped with a tight-fitting full facepiece meets the minimum requirements for § 721.63(a)(4).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. E8–26409 Filed 11–4–08; 8:45 am]

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DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Part 61–250

RIN 1293–AA16

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Final Rule.

SUMMARY: This final rule revises the regulations in 41 CFR Part 61–250 implementing the requirement under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (''VEVRAA'') that Government contractors track and annually report the number of employees in their workforces who are veterans covered under the law. Today's final rule revises the regulations in 41 CFR Part 61–250 to incorporate the amendment to VEVRAA made by the Veterans' Benefit and Health Care Improvement Act of 2000 (''VBHCIA''). The VBHCIA amendment extended the protections of VEVRAA to a category of veterans called ''recently separated veterans.'' In addition, the final rule published today clarifies that the regulations in 41 CFR Part 61–250 implement the reporting requirements under VEVRAA prior to their amendment in 2002 by the Jobs for Veterans Act (''JVA''), and apply to Government contracts entered into before December 1, 2003. The final rule also makes clear that the regulations in 41 CFR Part 61–300 implementing the JVA amendments to VEVRAA's reporting requirements, apply if a contract entered into before December 1, 2003, is modified on or after that date and the contract as modified is for $100,000 or more.

DATES: These regulations are effective December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Wilson, Chief, Compliance and Investigations Division, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1312, Washington, DC 20210, *Wilson.Robert2@dol.gov,* (202) 693–4719 (this is not a toll-free number).

For press inquiries, contact Michael Biddle, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1032, Washington, DC 20210, *Biddle.Michael@dol.gov,* (202) 693–5051 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (''VEVRAA''), 38 U.S.C. 4212(d), requires that Federal contractors report annually to the Secretary of Labor the number of employees and new hires that belong to the categories of veterans protected under the statute. The Veterans' Employment and Training Service (VETS) has promulgated two sets of regulations to implement the reporting requirements under VEVRAA. The regulations in 41 CFR Part 61–250 implement the reporting requirements under VEVRAA prior to the amendments made by the JVA in 2002, and apply to Government contracts of $25,000 or more that were entered into before December 1, 2003. The regulations in part 61–250 require contractors to use the VETS–100 Report form to provide information on the number of covered veterans in their workforces.

The recently published regulations in 41 CFR Part 61–300 implement the JVA amendments to the reporting requirements under VEVRAA (73 FR 28710, May 19, 2008), and apply to contracts entered into or modified on/or after December 1, 2003. The JVA amendments increased from $25,000 to $100,000, the dollar amount of the contract that subjects a Government contractor to the requirement to report the number of employees in their workforces who are covered veterans. In addition, the JVA amendments changed the categories of covered veterans under VEVRAA and thus the categories of veterans that contractors are required to track and report on annually. The regulations in part 61–300 require contractors to use the VETS–100A Report form to provide the required information on their employment of covered veterans.

Today's final rule revises the part 61–250 regulations to incorporate the amendment to VEVRAA that was made by the Veterans' Benefit and Health Care Improvement Act of 2000 (VBHCIA). Prior to amendment by the VBHCIA, VEVRAA required contractors with a contract of $25,000 or more to report at least annually to the Secretary the number of employees, by job category and hiring location, who are ''special disabled veterans, veterans of the Vietnam era, and other protected

veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.'' The VBHCIA extended the protections of VEVRAA to a new category of veterans called ''recently separated veterans.'' Under the VBHCIA, ''recently separated veteran'' is defined as ''any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.'' (The JVA amendments expanded coverage of recently separated veterans from one to three years after discharge or release from active duty to three years.) In addition, the final rule clarifies that the regulations in 41 CFR Part 61–250 apply to any contract or subcontract of at least $25,000 entered into before December 1, 2003, and that the regulations in 41 CFR Part 61–300, not the part 61–250 regulations, apply to such a contract if it is modified on or after December 1, 2003 and the contract as modified is for $100,000 or more. This clarification will assist contractors in determining whether the reporting requirements in 41 CFR Part 61–250 and/or the reporting requirements in 41 CFR Part 61–300 apply to their contracts.

The changes made by the final rule are discussed in the Section-by-Section Analysis. The sections of the 41 CFR Part 61–250 regulations that have not been changed are not discussed in the preamble.

Section-by-Section Analysis of Comments and Revisions

Section 61–250.1 What are the purpose and scope of this part?

This section outlines the purpose and scope of the regulations. The final rule adds the date to the statutory citation in paragraph (a) to indicate that the regulations in 41 CFR Part 61–250 implement the reporting requirements in 38 U.S.C. 4212(d) prior to their amendment in 2002 by the JVA. In addition, the final rule adds language to paragraph (a) to clarify that the reporting requirements in § 61–250.10 apply to any contract of $25,000 or more entered into before December 1, 2003, and that the reporting requirements in § 61–300.10 apply to such a contract if it is modified on or after December 1, 2003, and the contract as modified is for $100,000 or more.

Further, the final rule adds language to paragraphs (b) and (d) stating that the regulations in 41 CFR Part 60–250 administered by the Office of Federal Contract Compliance Programs apply to a contract of at least $25,000 entered into before December 1, 2003 (and not modified as described in paragraph (a) of this section).

Section 61–250.2 What definitions apply to this part?

The final rule amends § 61.250.2(b) by adding a new paragraph (7) setting forth the definition of ''recently separated veteran'' specified in the VBHCIA and by renumbering the remaining paragraphs in this section.

Section 61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

The final rule amends § 61–250.10 by adding ''recently separated veterans'' to the clause heading and to paragraphs (a)(1) and (2) of the clause.

Section 61–250.11 On what form must the data required by this part be submitted?

This section states that the data on veterans employment specified in the reporting requirements clause set forth in § 61–250.10 must be reported on the VETS–100 Report.

The final rule replaces ''mailed'' with ''provided'' in paragraph (a) to allow VETS the flexibility to distribute the form electronically. This change also would allow VETS to use the same distribution methods under both sets of regulations. In addition, the final rule revises the instructions for preparing the VETS–100 Report set forth in § 61–250.11 to conform to the instructions found on the VETS–100 Report form that is currently approved for use under OMB Control No. 1293–0005.

Regulatory Procedures

Publication in Final

VETS has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act, 5 U.S.C. 553 (''APA''). The final rule amends the regulations in 41 CFR Part 61–250 to include ''recently separated veterans'' as one of the categories of covered veterans. In this regard, the final rule merely incorporates the VBHCIA changes to the categories of veterans covered under VEVRAA.

In addition, the final rule amends 41 CFR 61–250.1(a) to clarify the scope and applicability of the reporting requirements of the regulations in 41 CFR Part 61–250 and the regulations in 41 CFR Part 61–300. The JVA amendments were made applicable only to Government contracts entered into or modified on or after December 1, 2003. The definitions relevant to contract coverage under 41 CFR Part 61–250 are those contained in 41 CFR 60–250.2. The term ''Government contract'' is defined in existing 41 CFR 60–250.2(i) as ''any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or non-personal services (including construction).'' Because a contract modification is a ''Government contract'' the JVA amendments apply to modifications of otherwise covered contracts made on or after December 1, 2003. Consequently, the regulation at 41 CFR 61–250.1(a) provides that the contractor must comply with the reporting requirements in 41 CFR 61–300.10, and not 41 CFR 61–250.10, if its contract of $25,000 or more entered into before December 1, 2003, is modified on or after that date and the contract as modified is for $100,000 or more. In essence, the amendment to 41 CFR 61–250.1(a) incorporates the effective date of the JVA amendments, which was determined by statute.

All the amendments to the regulations in 41 CFR Part 61–250 made by this final rule track statutory amendments. The Department of Labor may not, in response to public comment, change or decline to implement the coverage provisions of the VBHCIA amendment or the effective dates of the JVA amendments. Consequently, there is good cause for finding that applying the notice-and-comment procedure to the amendments to 41 CFR Part 61–250 is unnecessary and contrary to the public interest, pursuant to Section 553(b)(B) of the APA.

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. VETS has determined that this rule is not ''a significant regulatory action'' under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Executive Order 13132

VETS reviewed the rule in accordance with Executive Order 13132 regarding federalism, and determined that it does not have ''federalism implications.'' The rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Regulatory Flexibility Act

The rule clarifies existing requirements for Federal contractors. In view of this fact and because the rule does not substantively change existing obligations for Federal contractors, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Small Business Regulatory Enforcement Fairness Act

VETS has concluded that the rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). In reaching this conclusion, the OFCCP has determined that the rule will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform

Executive Order 12875—This rule does not create an unfunded Federal mandate upon any State, local, or tribal government. Unfunded Mandates Reform Act of 1995—This rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Congressional Review Act

This regulation is not a major rule for purposes of the Congressional Review Act.

Paperwork Reduction Act

The information collection requirements contained in the existing VEVRAA regulations are currently approved under OMB Control No. 1293–0005. The currently approved VETS–100 Report form reflects the requirements of the VBHCIA amendments, and thus requests information on the number of current employees and new hires that are recently separated veterans. Accordingly, this final rule does not make any changes to the currently approved information collections, and therefore need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Part 61–250

Government contracts, reporting and record keeping requirements, Veterans.

Signed at Washington, DC, on October 29, 2008.

Charles S. Ciccolella,

Assistant Secretary of Labor for Veterans' Employment and Training.

■ Based on the explanation provided by the preamble, VETS is amending Chapter 61 of Title 41 of the Code of Federal Regulations by revising Part 61–250 to read as follows:

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61–250.1 What are the purpose and scope of this part?
61–250.2 What definitions apply to this part?
61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?
61–250.11 On what form must the data required by this part be submitted?
61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?
61–250.99 What is the OMB control number for this part?
Appendix A—Federal Contractor Veterans' Employment Report VETS–100

Authority: 38 U.S.C. 4211 (2001) and 38 U.S.C. 4212 (2001).

§ 61–250.1 What are the purpose and scope of this part?

(a) This part 61–250 implements 38 U.S.C. 4212(d) (2001). Each contractor or subcontractor with a contract in the amount of $25,000 or more entered into before December 1, 2003, with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a) and the Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR Part 60–250, must submit a report according to the requirements of § 61–250.10, except that the contractor or subcontractor must submit a report according to the requirements of § 61–300.10, not § 61–250.10, if such a contract is modified on or after December 1, 2003, and the contract as modified is in the amount of $100,000 or more.

(b) Notwithstanding the regulations in this part, the regulations at 41 CFR Part 60–250, administered by OFCCP, continue to apply to the affirmative action obligations of contractors and subcontractors with contracts entered into before December 1, 2003 (and not modified as described in paragraph (a) of this section).

(c) Reporting requirements of this part regarding veterans will be deemed waived in those instances in which the Deputy Assistant Secretary, OFCCP, has granted a waiver under 41 CFR 60–250.4(b)(1), or has concurred in granting a waiver under 41 CFR 60–250.4(b)(2), from compliance with all the terms of the equal opportunity clause for those establishments not involved in government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding veterans will be required.

(d) 41 CFR 60–250.42 and Appendix B to part 60–250 provide guidance concerning the affirmative action obligations of Federal contractors and subcontractors with contracts entered into before December 1, 2003, (and not modified as described in paragraph (a) of this section), with respect to applicants for employment who are protected veterans.

§ 61–250.2 What definitions apply to this part?

(a) For purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part have the same meaning as set forth in 41 CFR Part 60–250.

(b) For purposes of this part:

(1) *Hiring location* (this definition is identical to establishment as defined by the instructions for completing Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report)) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Units at different locations, even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity with a separate Employer Identification Number (EIN). For these physically dispersed activities, list as establishments only those relatively

permanent main or branch offices, terminals, stations, etc., which are either:

(i) Directly responsible for supervising such dispersed activities, or

(ii) The base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved.)

(2) *Employee* means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance salespersons who are considered to be employees for such purposes solely because of the provisions of section 3121(d)(3)(B) of the Internal Revenue Code (26 U.S.C.). The term employee does not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job, and who work on remote or scattered sites or locations where it is not practical or feasible for the employer to make a visual survey of the work force within the report period; for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employees' work at the site; persons temporarily employed in any industry other than construction, such as mariners, stevedores, waiters/waitresses, movie extras, agricultural laborers, lumber yard workers, etc., who are obtained through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement; or persons on the payroll of a temporary service agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(3) *Job category* means any of the following: Officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), service workers, as required by the Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report), as defined as follows:

(i) *Officials and managers* means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

(ii) *Professionals* means occupations requiring either college graduation or experience of such kind and amount as to provide a background comparable to college education. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

(iii) *Technicians* means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

(iv) *Sales* means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

(v) *Office and clerical* includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

(vi) *Craft workers (skilled)* means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers exercise considerable independent judgment and usually receive an extensive period of training. Includes: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, hand painters, coaters, decorative workers, and kindred workers.

(vii) *Operatives (semiskilled)* means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flame cutters, electrical and electronic equipment assemblers, butchers and meat cutters, inspectors, testers and graders, hand packers and packagers, and kindred workers.

(viii) *Laborers (unskilled)* means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and grounds keepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

(ix) *Service workers* means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, char workers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection workers, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers.

(4) *Special disabled* veteran means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(5) *Veteran of the Vietnam era* means a veteran:

(i) Who served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released there from with other than a dishonorable discharge, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975, or

(B) Between August 5, 1964 and May 7, 1975 in any other location; or

(ii) Who was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in any other location.

(6) *Other protected veteran* means any other veteran who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, other than special disabled veterans or veterans of the Vietnam era.

(7) *Recently separated veteran* means a veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

(8) *OFCCP* means the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor.

(9) *VETS* means the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

(10) *States* means each of the several States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

(11) *Eligibility period* means the calendar year (January 1 through December 31) preceding the year in which the report must be filed. This calendar year is the same year in which the contractor received the Federal contract.

(12) *NAICS* means the North American Industrial Classification System.

§ 61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

Each contractor or subcontractor described in § 61–250.1 must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity action clause required by 41 CFR 60–250.5. The reporting requirements clause is as follows:

Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, ther Protected Veterans, and Recently Separated Veterans.

(a) The contractor or subcontractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, the number who are other protected veterans, and the number who are recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of that total, the number who are special disabled veterans, the number who are veterans of the Vietnam era, the number who are other protected veterans, and the number who are recently separated veterans; and

(3) The maximum number and minimum number of employees of such contractor at each hiring location during the period covered by the report.

(b) The above items must be reported by completing the form entitled ''Federal Contractor Veterans' Employment Report VETS–100.''

(c) VETS–100 reports must be submitted no later than September 30 of each year beginning September 30, 2001. The eligibility period (the period during which an employer received a Federal contract) for this report and all subsequent reports is the calendar year (January 1 through December 31) that precedes the year in which the report is submitted.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this clause must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report).

(e) The number of veterans reported according to paragraph (a) of this clause must be based on data known to contractors and subcontractors when completing their VETS–100 Reports. Contractors' and subcontractors' knowledge of veteran status may be obtained in a variety of ways, including, in response to an invitation to applicants to self-identify in accordance with 41 CFR 60–250.42, voluntary self-disclosures by protected incumbent veterans, or actual knowledge of an employee's veteran status by a contractor or subcontractor. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212. (OMB No. 1293–0005)

§ 61–250.11 On what form must the data required by this part be submitted?

(a) Data items required in paragraph (a) of the contract clause set forth in § 61–250.10 must be reported for each hiring location on the VETS–100 form. This form is provided annually to those contractors who are included in the VETS–100 data base. The form, and instructions for preparing it, are also set forth as follows:

The Vets–100 Report Form Is Reprinted as Appendix A to

41 CFR Part 61–250

WHO MUST FILE

This VETS–100 Report is to be completed by all nonexempt federal contractors and subcontractors with a contract or subcontract entered into before December 1, 2003, in the amount of $25,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services. Services include but are not limited to the following services: utility, construction,

transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller. Entering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS–100 Report during the following calendar year. A VETS–100A Report is to be completed by all nonexempt federal contractors and subcontractors whose only contract or subcontract with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) was entered into or modified on or after December 1, 2003.

WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and PL 105–339, requires that federal contractors report at least annually the numbers of existing employees who are: (1) Special disabled veterans, (2) veterans of the Vietnam era, and (3) other protected veterans (that is, who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized). For the existing employees, the numbers of veterans within these three groups are to be broken out by job category. New hires are to be reported over a twelve-month reporting period. The total number of veteran new hires in each of the three groups above is to be reported, along with the total number of recently separated veterans (*i.e.*, hired within twelve months of separation). In addition, over the same twelve-month period, the total number of new hires, both veterans and non-veterans, is required to be reported, along with the minimum and maximum total employment. This reporting is required by hiring location.

HOW TO SUBMIT THE VETS–100 REPORT

Single-establishment employers must file one completed form. All multi-establishment employers, *i.e.*, those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office: (B) A separate form for each hiring location employing 50 or more persons: and (C) EITHER, (I) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO–1 reporting procedures are NOT required for the VETS–100 Report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

RECORDKEEPING

Employers must keep copies of the completed annual VETS–100 Report submitted to DOL for a period of three years.

HOW TO PREPARE THE FORMS

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Reporting Organization: Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form: If a reporting organization submits only one VETS–100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION

Company Number: Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS–100 staff at (301) 306–6752 or e-mail *HELPDESK@VETS100.COM.*

Twelve Month Period Ending: Enter the end date for the twelve-month reporting period used as the basis for filing the VETS–100 Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. That payroll period will be the basis for reporting Number of Employees, as described below. Then the twelve-month period preceding the end date of that payroll period will be your twelve-month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO–1 Report may also use that date as the ending date for the payroll period selected for the VETS–100 Report.

Name and Address for Single Establishment Employers: COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers: For parent company headquarters location, COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. For hiring locations of a parent company, COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number: Single Establishment and Multi Establishment Employers must COMPLETE the NAICS Code, Employer ID Number, and the DUNS number if the contractor has a DUNS number, as described below.

NAICS Code Enter the six (6) digits NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS): If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN): Enter the nine (9) digit numbers assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON EMPLOYEES

Counting Veterans: Some veterans will fall into more than one of the protected veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases, the veteran must be counted in each category. Recently separated veterans will be counted in the New Hires section of the VETS–100 Report only. In subsequent years, these veterans will no longer be considered newly separated veterans.

Number of Employees: Select any payroll period ending between July 1 and August 31 of the current year. Provide all data for permanent full-time and part-time employees who were special disabled veterans, Vietnam-era veterans, or other protected veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61–250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1–9) in columns L, M, and N. The description of job categories can be found in 41 CFR 61–250.2(b)(3). Blank spaces will be considered zeros.

New Hires: Report the number of permanent full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P, Q, R, and S (Line 10) are required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees: Report the maximum and minimum number of permanent employees on board during the period covered as indicated by 41 CFR 61–250.10(a)(3). Contractors may use any reasonable method for calculating and determining the maximum and minimum number of employees during the reporting period.

DEFINITIONS

Hiring location means an establishment as defined at 41 CFR 61–250.2(b).

Special Disabled Veteran means (i) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (A) rated at 30 percent or more, or (B) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 38 U.S.C. 3106 to have a serious employment handicap or (ii) a person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam-era means a person who: (i) Served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released there from with other than a dishonorable discharge, if any part of such active duty was performed: (A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (B) between August 5, 1964, and May 7, 1975, in all other cases; or (ii) was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability if any part of such active duty was performed (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (B) between August 5, 1964, and May 7, 1975, in any other location.

Recently Separated Veteran means any veteran who served on active duty in the U.S. military, ground, naval or air service during the one-year period beginning on the date of such veteran's discharge or release from active duty.

Other Protected Veterans means veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized. For those with Internet access, the information required to make this determination is available at *http://www.opm.gov/veterans/html/vgmedal2.htm.* A copy of the list also may be obtained by calling (301) 306–6752 and requesting that a copy of the list be mailed to you.

(b) Contractors and subcontractors that submit computer-generated output for more than 10 hiring locations to satisfy their VETS–100 reporting obligations must submit the output in the form of an electronic file. This file must comply with current Department of Labor specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors that submit VETS–100 Reports for ten locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

(c) Contractors and subcontractors may submit the VETS–100 Report via the Internet. The Internet address for the site is *https://vets100.vets.dol.gov/vets100login.htm.* A company number is required to access this site. The number is provided to employers on the VETS–100 Report form that is provided annually to those employers who are included in the VETS–100 database. Other employers may obtain a company number by e-mailing their request to *HELPDESK@VETS100.COM* or by calling the VETS–100 Reporting System at (301) 586–1580.

(d) VETS or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(e) It is the responsibility of each contractor or subcontractor to obtain necessary supplies of the VETS–100 Report form before the annual September 30 filing deadline. Contractors and subcontractors who do not receive forms should request them in time to meet the deadline. Requests for the VETS–100 Report form may be made by mail by contacting: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: VETS–100 Report Form Request or on the Internet at *https://vets100.vets.dol.gov/.* (OMB No. 1293–0005).

§ 61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its report as required by this part.

§ 61–250.99 What is the OMB control number for this part?

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and its implementing regulations at 5 CFR Part 1320, the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this part.

BILLING CODE 4510–79–P

Appendix A to Part 61–250—Federal Contractor Veterans' Employment Report VETS–100

VETS-100 FEDERAL CONTRACTOR REPORT ON VETERANS' EMPLOYMENT

OMB NO:1293-0005
Expires 04/30/2011

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
200 Constitution Ave, NW
Washington, DC 20210

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	**TYPE OF FORM** (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____(MSC)

ATTN: Human Resource/EEO Department

COMPANY IDENTIFICATION INFORMATION (Omit items preprinted above-ADD Company Contact Information Below)

COMPANY No:	*TWELVE MONTH PERIOD ENDING* _____ M M D D **2 0 0 8** Y Y Y Y		
NAME OF PARENT COMPANY:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP CODE:*
NAME OF COMPANY CONTACT:	*TELEPHONE AND EMAIL FOR CONTACT:*		

NAME OF HIRING LOCATION:	*ADDRESS (NUMBER AND STREET):*		
CITY:	*COUNTY:*	*STATE:*	*ZIP CODE:*

NAICS:		**DUNS:**		*EMPLOYER ID (IRS TAX No.)*	

EMPLOYEE DATA AND VETERAN REPORTING REQUIREMENTS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE TARGETED VETERANS, DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMNS L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. INSTRUCTIONS ARE FURTHER DETAILED ON THE REVERSE OF THIS FORM.

JOB CATEGORIES		NUMBER OF EMPLOYEES			NEW HIRES (PREVIOUS 12 MONTHS)				
		SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	RECENTLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS	1								
PROFESSIONALS	2								
TECHNICIANS	3								
SALES WORKERS	4								
OFFICAL AND CLERICAL	5								
CRAFT WORKERS (SKILLED)	6								
OPERATIVE (SEMI-SKILLED)	7								
LABORERS (UNSKILLED)	8								
SERVICE WORKERS	9								
TOTAL	10								

Report the total maximum and minimum number of permanent employees during the period covered by this report.

Maximum Number	Minimum Number

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT (VETS-100)

WHO MUST FILE

This VETS-100 Report is to be completed by all nonexempt federal contractors and subcontractors with a contract or subcontract entered into before December 1, 2003, in the amount of $25,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services. Services include but are not limited to the following services: utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller Entering into a covered federal contract or subcontract during a given calendar year establishes the requirement to file a VETS-100 Report during the following calendar year A VETS-100A Report is to be completed by all nonexempt federal contractors and subcontractors whose only contract or subcontract with any department or agency of the United States for the procurement of personal property and non-personal services (including construction) was entered into or modified on or after December 1, 2003.

WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and PL 105-339, requires that federal contractors report at least annually the numbers of **existing** employees who are. 1) special disabled veterans, 2) veterans of the Vietnam era, and 3) other protected veterans (that is, who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized). For the existing employees, the numbers of veterans within these three groups are to be broken out by job category. **New hires** are to be reported over a twelve-month reporting period. The total number of veteran new hires in each of the three groups above is to be reported, along with the total number of recently separated veterans (i.e. hired within twelve months of separation). In addition, over the same twelve-month period, the total number of new hires, both veterans and non-veterans, is required to be reported, along with the minimum and maximum total employment This reporting is required by hiring location.

HOW TO SUBMIT THE VETS-100 REPORT

Single-establishment employers must file one completed form All multi-establishment employers, i e , those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office (B) a separate form for each hiring location employing 50 or more persons and (C) EITHER, (I) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required for the VETS-100 Report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100 Report submitted to DOL for a period of three years.

HOW TO PREPARE THE FORMS

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location

Type of Reporting Organization Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization submits only one VETS-100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided For each form, only one box should be checked within this block.

I. COMPANY IDENTIFICATION INFORMATION

Company Number Do not change the Company Number that is printed on the form If there are any questions regarding your Company Number, please call the VETS-100 staff at (301) 306-6752 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve-month reporting period used as the basis for filing the VETS-100 Report To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period That payroll period will be the basis for reporting Number of Employees, as described below Then the twelve-month period preceding the end date of that payroll period will be your twelve-month period covered This period is the basis for reporting New Hires, as described below Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100 Report

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers **For parent company headquarters location,** COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location **For hiring locations of a parent company,** COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers must COMPLETE the NAICS Code, Employer ID Number, and the DUNS number if the contractor has a DUNS number, as described below.

NAICS Code Enter the six (6) digits NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit numbers assigned by the I R S to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN Otherwise, enter the EIN for the parent company

II. INFORMATION ON EMPLOYEES

Counting Veterans Some veterans will fall into more than one of the protected veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases, the veteran must be counted in each category. Recently separated veterans will be counted in the New Hires section of the VETS-100 Report only. In subsequent years, these veterans will no longer be considered newly separated veterans.

Number of Employees Select any payroll period ending between July 1 and August 31 of the current year. Provide all data for permanent full-time and part-time employees who were special disabled veterans, Vietnam-era veterans, or other protected veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1-9) in columns L, M, and N. The description of job categories can be found in 41 CFR 61-250.2(b)(3). Blank spaces will be considered zeros

New Hires Report the number of permanent full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P, Q, R, and S (Line 10) are required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees Report the maximum and minimum number of permanent employees on board during the period covered as indicated by 41 CFR 61-250.10(a)(3). Contractors may use any reasonable method for calculating and determining the maximum and minimum number of employees during the reporting period

DEFINITIONS:

Hiring location' means an establishment as defined at 41 CFR 61 250.2(b).

Special Disabled Veteran' means (i) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (A) rated at 30 percent or more, or (B) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 38 U.S.C. 3106 to have a serious employment handicap or (ii) a person who was discharged or released from active duty because of a service-connected disability

Veteran of the Vietnam-era' means a person who (i) served on active duty in the U.S military, ground, naval or air service for a period of more than 180 days, and who was discharged or released there from with other than a dishonorable discharge, if any part of such active duty was performed: (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or (B) between August 5, 1964, and May 7, 1975, in all other cases; or (ii) was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability if any part of such active duty was performed (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or (B) between August 5, 1964, and May 7, 1975, in any other location.

Recently Separated Veterans' means any veteran who served on active duty in the U S. military, ground, naval or air service during the one-year period beginning on the date of such veteran's discharge or release from active duty.

Other Protected Veterans' means veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized For those with Internet access, the information required to make this determination is available at http://www opm gov/veterans/html/vgmedal2 htm. A copy of the list also may be obtained by calling (301) 306-6752 and requesting that a copy of the list be mailed to you

Public reporting burden for this collection is estimated to average 60 minutes per paper response, and 30 minutes per electronic response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D C 20210 All completed VETS-100 Reports should be sent to the address indicated on the front of the form

[FR Doc. E8–26185 Filed 11–4–08; 8:45 am]
BILLING CODE 4510–79–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–8049]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

Previously, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi:				
Vicksburg, City of, Warren County	280176	March 28, 1975, Emerg; September 29, 1989, Reg; November 5, 2008, Susp.	11/05/2008	11/05/2008
Warren County, Unincorporated Areas	280198	December 26, 1973, Emerg; November 15, 1979, Reg; November 5, 2008, Susp.	do	Do.
North Carolina:				
Cabarrus County, Unincorporated Areas.	370036	July 7, 1975, Emerg; May 5, 1981, Reg; November 5, 2008, Susp.	do	Do.
Concord, City of, Cabarrus County	370037	January 16, 1974, Emerg; March 4, 1980, Reg; November 5, 2008, Susp.	do	Do.
Harrisburg, Town of, Cabarrus County	370038	June 17, 1975, Emerg; June 30, 1976, Reg; November 5, 2008, Susp.	do	Do.
Kannapolis, City of, Cabarrus County	370469	-, Emerg; March 25, 1991, Reg; November 5, 2008, Susp.	do	Do.
Tennessee:				
Bradford, City of, Gibson County	470057	August 10, 1977, Emerg; February 16, 1983, Reg; November 5, 2008, Susp.	do	Do.
Dresden, City of, Weakley County	470240	January 8, 1988, Emerg; February 1, 1990, Reg; November 5, 2008, Susp.	do	Do.
Fayette County, Unincorporated Areas	470352	August 19, 1975, Emerg; July 5, 1983, Reg; November 5, 2008, Susp.	do	Do.
Gallaway, Town of, Fayette County	470048	January 28, 1976, Emerg; July 5, 1982, Reg; November 5, 2008, Susp.	do	Do.
Gibson County, Unincorporated Areas	470359	December 16, 1982, Emerg; October 18, 1983, Reg; November 5, 2008, Susp.	do	Do.
Humboldt, City of, Gibson County	470059	April 2, 1975, Emerg; September 15, 1983, Reg; November 5, 2008, Susp.	do	Do.
Kenton, Town of, Gibson County	470224	December 2, 1985, Emerg; December 2, 1985, Reg; November 5, 2008, Susp.	do	Do.
Martin, City of, Weakley County	470202	January 28, 1975, Emerg; September 15, 1989, Reg; November 5, 2008, Susp.	do	Do.
Medina, City of, Gibson County	470251	March 27, 2006, Emerg; -, Reg; November 5, 2008, Susp.	do	Do.
Milan, Town of, Gibson County	470060	July 10, 1975, Emerg; February 16, 1983, Reg; November 5, 2008, Susp.	do	Do.
Obion, Town of, Obion County	470253	August 11, 1975, Emerg; March 16, 1981, Reg; November 5, 2008, Susp.	do	Do.
Obion County, Unincorporated Areas	470361	-, Emerg; March 4, 1998, Reg; November 5, 2008, Susp.	do	Do.
Piperton, City of, Fayette County	470401	January 27, 1992, Emerg; December 16, 1994, Reg; November 5, 2008, Susp.	do	Do.
Rives, City of, Obion County	470235	October 26, 1984, Emerg; September 1, 1987, Reg; November 5, 2008, Susp.	do	Do.
Rossville, City of, Fayette County	470050	February 12, 1976, Emerg; June 1, 1981, Reg; November 5, 2008, Susp.	do	Do.
Rutherford, Town of, Gibson County	470061	-, Emerg; August 27, 1997, Reg; November 5, 2008, Susp.	do	Do.
Somerville, Town of, Fayette County	470051	August 27, 1975, Emerg; July 5, 1982, Reg; November 5, 2008, Susp.	do	Do.
South Fulton, City of, Obion County	475446	December 10, 1971, Emerg; June 15, 1973, Reg; November 5, 2008, Susp.	do	Do.
Trenton, City of, Gibson County	470062	June 26, 1975, Emerg; February 16, 1983, Reg; November 5, 2008, Susp.	do	Do.
Union City, City of, Obion County	470142	October 25, 1974, Emerg; May 5, 1981, Reg; November 5, 2008, Susp.	do	Do.
Region V				
Illinois:				
Chester, City of, Randolph County	170576	June 12, 1974, Emerg; November 16, 1983, Reg; November 5, 2008, Susp.	do	Do.
Evansville, Village of, Randolph County	170577	June 25, 1975, Emerg; April 15, 1988, Reg; November 5, 2008, Susp.	do	Do.
Kaskaskia, Village of, Randolph County	170736	December 27, 1973, Emerg; September 4, 1985, Reg; November 5, 2008, Susp.	do	Do.
Randolph County, Unincorporated Areas.	170575	April 1, 1974, Emerg; June 3, 1986, Reg; November 5, 2008, Susp.	do	Do.
Sparta, City of, Randolph County	170579	May 28, 1974, Emerg; August 24, 1984, Reg; November 5, 2008, Susp.	do	Do.

*-do- = Ditto.

Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: October 28, 2008.

Michael K. Buckley,

Acting Assistant Administrator Mitigation Directorate Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–26291 Filed 11–4–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–1015]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

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

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

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Fresno	Unincorporated areas of Fresno County, (07–09–1791P).	August 26, 2008; September 2, 2008; *The Fresno Bee*.	The Honorable Henry Perea, Chairman, Fresno County Board of Supervisors, 2281 Tulare Street, Room 300, Fresno, CA 93721.	June 16, 2008	065029.
Sacramento	City of Folsom, (07–09–1657P).	September 17, 2008; September 24, 2008; *The Folsom Telegraph*.	The Honorable Eric King, Mayor, City of Folsom, 50 Natoma Street, Folsom, CA 95630.	January 15, 2009	060263.
Colorado:					
Douglas	Unincorporated areas of Douglas County, (08–08–0334P).	September 4, 2008; September 11, 2008; *Douglas County News-Press*.	The Honorable Melanie A. Worley, Chair, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, CO 80104.	January 9, 2009	080049.

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Douglas	Unincorporated areas of Douglas County, (08–08–0607P).	September 4, 2008; September 11, 2008; *Douglas County News-Press*.	The Honorable Melanie A. Worley, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, CO 80104.	August 21, 2008	080049.
Douglas	Town of Parker, (08–08–0334P).	September 4, 2008; September 11, 2008; *Douglas County News-Press*.	The Honorable David Casiano, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138-7334.	January 9, 2009	080310.
Illinois: Lake	City of Park City, (08–05–3860P).	September 26, 2008; October 2, 2008; *Lake County News-Sun*.	The Honorable Steve Pannell, Mayor, City of Park City, 3420 Kehm Boulevard, Park City, IL 60085.	February 2, 2009	170386.
Maine: Lincoln	Town of Southport, (08–01–0451P).	September 18, 2008; September 25, 2008; *Boothbay Register*.	The Honorable Gerald Gamage, First Selectman, Town of Southport, P.O. Box 149, Southport, ME 04576.	August 26, 2008	230221.
Massachusetts: Worcester.	Town of Westborough, (08–01–0865P).	September 16, 2008; September 23, 2008; *Worcester Telegram & Gazette*.	The Honorable George Thompson, Chairman, Town of Westborough Board of Selectmen, 34 West Main Street, Westborough, MA 01581.	September 26, 2008	250344.
Nevada: Clark	Unincorporated areas of Clark County, (07–09–0831P).	September 23, 2008; September 30, 2008; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	October 14, 2008	320003.
Ohio:					
Franklin	Unincorporated areas of Franklin County, (08–05–0337P).	August 20, 2008; August 27, 2008; *Hilliard News*.	The Honorable Mary Jo Kilroy, Commissioner, Franklin County, 373 South High Street, 26th Floor, Columbus, OH 43215.	August 4, 2008	390167.
Franklin	City of Hilliard, (08–05–0337P).	August 20, 2008; August 27, 2008; *Hilliard News*.	The Honorable Donald J. Schonhardt, Mayor, City of Hilliard, 3800 Municipal Way, Hilliard, OH 43026.	August 4, 2008	390175.
South Carolina: Sumter.	Unincorporated areas of Sumter County, (08–04–5092P).	September 10, 2008; September 17, 2008; *The Item*.	The Honorable William T. Noonan, Sumter County Administrator, 13 East Canal Street, Sumter, SC 29150.	January 15, 2009	450182.
Texas:					
Bexar	City of San Antonio, (07–06–0824P).	June 26, 2008; July 3, 2008; *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	June 19, 2008	480045.
Montgomery	Unincorporated areas of Montgomery County (07–06–0641P).	September 23, 2008; September 30, 2008; *Conroe Courier*.	The Honorable Alan B. Sadler, Montgomery County Judge, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	January 28, 2009	480483.
Montgomery	City of Panorama Village (07–06–0641P).	September 23, 2008; September 30, 2008; *Conroe Courier*.	The Honorable Howard Kravetz, Mayor, City of Panorama Village, 98 Hiwon Drive, Panorama Village, TX 77304.	January 28, 2009	481263.

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

Dated: October 27, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8-26305 Filed 11-4-08; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified
City of Sturgis, South Dakota FEMA Docket No.: B–7749				
South Dakota	City of Sturgis	Bear Butte Creek	At eastern corporate limits	*3339
			Approximately 3,400 feet upstream of DM&E railroad.	*3566
South Dakota	City of Sturgis	Cook Canyon	Just downstream of DM&E railroad	*3446
			Just downstream of Interstate 90	*3480
South Dakota	City of Sturgis	Deadman Gulch	Approximately 200 feet downstream of Interstate 90.	*3528
			At Elk Road	*3600
South Dakota	City of Sturgis	Dolan Creek	At confluence with Bear Butte Creek	*3378
			Approximately 200 feet upstream of Dolan Creek Road.	*3570
South Dakota	City of Sturgis	East Vanocker Creek	At confluence with Vanocker Creek, downstream of Otter Road.	*3529
			Just downstream of DM&E railroad	*3554
South Dakota	City of Sturgis	South Dolan Creek	At confluence with Dolan Creek just upstream of Interstate 90.	*3503
			At southern corporate limits	*3570
South Dakota	City of Sturgis	Vanocker Creek	At confluence with Vanocker Creek	*3458
			At Vanocker Road	*3595
South Dakota	City of Sturgis	West Vanocker Creek	At confluence with Vanocker Creek, just upstream of DM&E railroad.	*3540
			Just downstream of Pineview Drive	*3590

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

ADDRESSES

City of Sturgis
Maps are available for inspection at 1040 Second Street, Suite 102, Sturgis, SD 57785.

Village of Maple Bluff, Wisconsin FEMA Docket No.: B–7790				
Wisconsin	Village of Maple Bluff	Lake Mendota	Entire Shoreline	+853

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

ADDRESSES

Village of Maple Bluff
Maps are available for inspection at 18 Oxford Place, Madison, WI 53704.

Flooding source(s)	Location of referenced elevation	*Elevation in feet(NGVD) +Elevation in feet(NAVD) #Depth in feet above ground Modified	Communities affected
Tulare County, California, and Incorporated Areas FEMA Docket No.: B–7763			
Kaweah River	At Mill Creek/Packwood Creek Split	+363	Unincorporated Areas of Tulare County.
	At downstream side of Southern Pacific Railroad	+390	
Shallow Flooding (extensive area covering 19 map panels).	Approximately 1,000 feet southeast of intersection of State Highway 99 and Goshen Avenue.	+282	Unincorporated Areas of Tulare County, City of Farmersville, City of Visalia.
	Approximately 350 feet southwest of intersection of Lort Drive and Railroad.	+391	
St. Johns River	Approximately 0.5 mile upstream of Avenue 328 Bridge	+317	Unincorporated Areas of Tulare County, City of Visalia.
	Approximately 220 feet downstream of Southern Pacific Railroad.	+378	

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

ADDRESSES

City of Farmersville
Maps are available for inspection at Farmersville City Hall, 909 West Visalia Road, Farmersville, CA.

City of Visalia
Maps are available for inspection at Visalia City Hall East, 315 East Acequia, Visalia, CA.

Unincorporated Areas of Tulare County
Maps are available for inspection at Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, CA.

Crawford County, Kansas, and Incorporated Areas FEMA Docket No.: 7770			
Cow Creek	Approximately 0.34 mile downstream of South Broadway	+878	Unincorporated Areas of Crawford County, City of Pittsburg.
	Confluence of Second Cow Creek	+891	
East Fork of Taylor Branch	Approximately 0.35 mile downstream of East 4th Street	+899	Unincorporated Areas of Crawford County, City of Pittsburg.
	At East Atkinson Avenue	+930	
First Cow Creek	Confluence with Second Cow Creek	+891	Unincorporated Areas of Crawford County, City of Pittsburg.
	Approximately 53 feet upstream of West 20th Street	+908	
Taylor Branch	Confluence with East Fork Taylor Branch	+897	City of Pittsburg.
	Approximately 0.36 mile upstream of East 10th Street	+934	

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

ADDRESSES

City of Pittsburg
Maps are available for inspection at 201 West 4th Street, Pittsburg, KS 66762.

Unincorporated Areas of Crawford County
Maps are available for inspection at 111 East Forest, Suite M, Girard, KS 66743.

Daviess County, Kentucky, and Incorporated Areas FEMA Docket No.: B–7748			
Gilles Ditch	Just upstream Audubon Parkway	+399	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 2600 feet upstream U.S. 60	+415	
Goetz Ditch	Approximately 100 feet upstream South Griffith Avenue	+397	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 150 feet downstream South Griffith Avenue	+397	

Flooding source(s)	Location of referenced elevation	*Elevation in feet(NGVD) +Elevation in feet(NAVD) #Depth in feet above ground Modified	Communities affected
Horse Fork	Approximately 1500 feet upstream Wendell Ford Expressway..	+394	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 120 feet downstream of KY–54	+418	
Ohio River	At the western county boundary (Approximately 11000 feet downstream Crane Pond Slough).	+383	City of Owensboro, Unincorporated Areas of Daviess County.
	At confluence with Blackford Creek	+393	
Persimmon Ditch	Just upstream Ewing Road	+389	City of Owensboro, Unincorporated Areas of Daviess County.
	Just downstream U.S. 60	+401	
Scherm Ditch	Just upstream Lewis Lane	+399	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 1100 feet upstream South Griffith Avenue	+400	
Yellow Creek	Just upstream KY–144	+392	City of Owensboro, Unincorporated Areas of Daviess County.
	Approximately 520 feet upstream Wendell Ford Expressway.	+408	

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

ADDRESSES

City of Owensboro
Maps are available for inspection at PO Box 732, 200 East 3rd Street, Owensboro, KY 42302–0732.

Unincorporated Areas of Daviess County
Maps are available for inspection at PO Box 732, 200 East 3rd Street, Owensboro, KY 42302–0732.

Lea County, New Mexico, and Incorporated Areas
FEMA Docket No.: B–7790

Main Street Ditch	Approximately 270 feet downstream of S. Industrial Rd. ...	+3887	Unincorporated Areas of Lea County.
	Approximately 2050 feet upstream of S. Industrial Road ...	+3893	
Railroad Ditch	Intersection of S. Main Street and E. Gilmore Road	+3880	Unincorporated Areas of Lea County.
	Intersection of R Avenue and 9th Street	+3911	
Stream 2	Intersection with Dal Paso Street	+3637	Unincorporated Areas of Lea County.
	Approximately 2650 feet upstream of Dal Paso St. (City of Hobbs limits).	+3643	
Stream 3	Intersection with N. Dal Paso St.	+3655	Unincorporated Areas of Lea County.
	Approximately 2850 feet upstream of N. Rolling Meadows Dr..	+3674	

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

ADDRESSES

Unincorporated Areas of Lea County
Maps are available for inspection at 100 North Main, Lovington, NM 88260.

Waukesha County, Wisconsin, and Incorporated Areas
FEMA Docket No.: B–7790

Lake Nagawicka	Entire Shoreline	*893	Village of Nashotah.
North Lake	Entire Shoreline	*900	Village of Chenequa.

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

ADDRESSES

Village of Chenequa
Maps are available for inspection at 31275 W. Hwy K, Chenequa, WI 53029.

Flooding source(s)	Location of referenced elevation	*Elevation in feet(NGVD) +Elevation in feet(NAVD) #Depth in feet above ground Modified	Communities affected
Village of Nashotah			
Maps are available for inspection at N44 W32950 Watertown Plank Rd, Nashotah, WI 53058–0123.			

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

Dated: October 24, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–26293 Filed 11–4–08; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 73, No. 215
Wednesday, November 5, 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 HOMELAND SECURITY

6 CFR Chapter I

[DHS 2008–0076]

RIN 1601–AA52

Secure Handling of Ammonium Nitrate Program

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Advance Notice of Proposed Rulemaking; correction.

SUMMARY: The Department of Homeland Security published an Advance Notice of Proposed Rulemaking in the **Federal Register** of October 29, 2008. That document contained an omission; specifically, it did not include ''DHS'' in the reference to the docket number.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Office of Infrastructure Protection, Infrastructure Security Compliance Division, Mail Stop 8100, Washington, DC 20528, telephone number (703) 235–5263.

Correction

In the **Federal Register** of October 29, 2008, in FR Doc. E8–25821, on page 64280, in the first column, correct the **ADDRESSES** section to read:

ADDRESSES: You may submit comments, identified by docket number DHS 2008–0076, by one of the following methods:

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

• *Mail:* U.S. Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division, Mail Stop 8100, Washington, DC 20528.

Mary Kate Whalen,

Associate General Counsel for Regulatory Affairs.

[FR Doc. E8–26294 Filed 11–4–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AC13

General Policies, Types of Loans, Loan Requirements—Telecommunications

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Program, hereinafter referred to as Rural Development and/or the Agency, amends its regulations for the Telecommunications Loan Program (Loan Program). The Agency has reviewed its criteria for approving loans and has determined that modifications to the Loan Program regulations are required in order to ensure that some financially sound applicants are not excluded from the Loan Program.

Specifically, this rule will modify the Times Interest Earned Ratio (TIER) requirements that an applicant must comply with when receiving a loan. In addition, the rule is part of an ongoing Agency project to update Agency policies to enable borrowers to provide reliable, modern telecommunications service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

In the final rules section of this **Federal Register**, Rural Development is publishing this action as a direct final rule without prior proposal because the Agency views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by Rural Development or carry a postmark or equivalent no later than December 5, 2008.

ADDRESSES: Submit adverse comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and in the ''Search Documents'' box, enter RUS–08–Telecom–0002, and select GO>>. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.

• *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room 5159, 1400 Independence Avenue, Washington, DC 20250–1522. Please state that your adverse comment refers to Docket No. RUS–08–Telecom–0002.

• *Other Information:* Additional information about Rural Development and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Jerry H. Brent, Director, Northern Division, Telecommunications Program, USDA Rural Development, STOP 1595, 1400 Independence Avenue, SW., Washington, DC 20250–1595, Telephone (202)720–1025, Facsimile (202) 690–4654. *E-mail address: jerry.brent@usda.gov*

SUPPLEMENTARY INFORMATION: See the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable **SUPPLEMENTARY INFORMATION** on this action.

Dated: September 8, 2008.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E8–26317 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD73

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing this rule to manage winter visitation and recreational use in Yellowstone National Park for an interim period of three winter seasons commencing with the 2008–2009 season. The proposed rule would also establish the framework for the long-term management of winter use in Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway. This proposed rule would require that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound requirements, and that snowmobilers in Yellowstone be accompanied by a commercial guide. It also proposes daily entry limits on the numbers of snowmobiles and snowcoaches that may enter the parks. Traveling off designated oversnow routes will remain prohibited.

DATES: Comments must be received by November 20, 2008.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD73 (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190
- *Hand Deliver to:* Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All submissions received must include the agency name and RIN. For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Management Assistant's Office, Headquarters Building, Yellowstone National Park, 307–344–2019 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades under the guidance provided by a number of sources. The history of the issue has been discussed at length in previous notices, most recently at 72 FR 70781 (Dec. 13, 2007) and in the 2008 Winter Use Plans Environmental Assessment (2008 EA).

In 2003–2004, the U.S. District Courts for the District of Columbia and the District of Wyoming vacated the prior winter use plans and implemented special regulations that had been promulgated in 2003 and in 2000–01, respectively. Subsequently, the NPS prepared a Temporary Winter Use Plans Environmental Assessment in 2004. The 2004 Plan was intended to provide a framework for managing winter use in the parks for a period of three years, and was approved in November 2004 with a ''Finding of No Significant Impact'' (FONSI). A final rule was published in the **Federal Register** implementing the 2004 Plan beginning with the 2004–2005 winter season (69 FR 65360). Its provisions imposed a limit of 720 snowmobiles per day for Yellowstone and 140 snowmobiles for Grand Teton and the Parkway; a requirement that all recreational snowmobiles in Yellowstone must be accompanied by a commercial guide; and a requirement that all recreational snowmobiles operating in the parks must meet Best Available Technology (BAT) requirements (hereinafter referred to as air and sound emissions requirements) for reducing noise and air pollution (with limited exceptions at Grand Teton and the Parkway). With these limits and requirements, the NPS did not find impairment to park resources and values in its 2004 decision and did not evaluate impairment at higher levels.

The 2004 rule provided the framework for management of winter use in the Parks from December 2004 through the winter season of 2006–2007, during which time the NPS prepared a long-term winter use plan and EIS for the parks.

Several litigants filed lawsuits challenging the 2004 Plan in both the District Court in Wyoming and the District Court in the District of Columbia. In October 2005, the Wyoming District Court upheld the validity of the 2004 winter use rule in *The Wyoming Lodging and Restaurant Association* v. *U.S. Department of the Interior.* Congress on three occasions included language in appropriations legislation for the Department of the Interior requiring that the 2004 winter use rules remain in effect for the winter seasons of 2004–2005, 2005–2006, and 2006–2007. As a result of the legislative actions, on September 24, 2007, the DC District Court dismissed as moot the pending claims against the 2004 Plan.

Scoping for the new long-term plan began in June 2005, a Draft Environmental Impact Statement was released in March 2007, and a proposed rule reflecting the preferred alternative in the DEIS was published in May 2007. A Final Environmental Impact Statement was released in September 2007, and a Record of Decision was signed in November 2007 (later amended on July 16, 2008). The Final Rule implementing the decision was published in the **Federal Register** on December 13, 2007 (72 FR 70781).

The decision provided a framework for long-term management of winter use in the Parks that was similar in many ways to that which occurred under the 2004 Plan, although with lower daily snowmobile entry limits for Yellowstone. A maximum daily limit of 540 snowmobiles meeting air and sound emission requirements was mandated for Yellowstone, along with a requirement that all snowmobilers must be accompanied by a commercial guide. A limit of 83 snowcoaches per day was established, with air and sound emission requirements implemented by the winter season of 2011–2012. For Grand Teton and the Parkway, the decision imposed a limit of 40 snowmobiles on Jackson Lake in order to provide ice fishing access, and 25 snowmobiles on the Grassy Lake Road in order to provide access to and from the adjoining Targhee National Forest. While these limits were well within the range of discretion for the agency to adopt, these limits again did not reflect any legal ''cap'' on any future limits adopted by the agency. In order to provide continuity during the transition from the 2004 Plan, the first season under the 2007 Plan was managed in virtually the same way as had been in effect under the 2004 Plan.

Shortly after the NPS published the 2007 Final Rule, the National Parks Conservation Association, Greater Yellowstone Coalition, and several other environmental groups filed lawsuits in the U.S. District Court for the District of Columbia. The plaintiffs challenged the adequacy of the analysis supporting the decision, and alleged that the NPS had violated the 1916 Organic Act and other laws, policies, and regulations governing management of the Parks. In particular, the plaintiffs argued that a daily limit of 540 snowmobiles in Yellowstone would cause irreparable harm and that snowmobiles should be eliminated in favor of snowcoach-only access to the park.

Concurrently, the State of Wyoming and others filed lawsuits in the U.S. District Court for the District of Wyoming, also challenging the 2007 FEIS, ROD, and Final Rule. The plaintiffs in the Wyoming District Court challenged the decision regarding the requirements for commercial guiding, and argued that the NPS Organic Act compels the NPS to allow at least 720 snowmobiles per day in Yellowstone. The plaintiffs also challenged the decision to use full-forecasting only for the management of Sylvan Pass.

In accordance with the 2007 Record of Decision, the NPS met with the community of Cody and the State of Wyoming to further explore options for management of Sylvan Pass. Those discussions resulted in an agreement in June 2008, and a ROD amendment on July 16, 2008, calling for use of forecasting and helicopter and howitzer-dispensed explosives to manage avalanche danger at Sylvan Pass. The pass would also be open for a limited, core season.

On September 15, 2008, the DC District Court issued a decision granting summary judgment for the plaintiffs and ordered the 2007 Final Rule, ROD, and FEIS to be vacated and remanded to the NPS for further proceedings consistent with the Court's opinion. The DC District Court order is not final, and the decision whether to appeal that order is currently under consideration. Although litigation is still pending in the Wyoming District Court, the vacatur by the DC Court, if it becomes final, would result in the 2004 Rule being reinstated since it was the rule in effect that was replaced by the 2007 Rule. The 2004 Rule did not have an expiration date, though it has often been referred to as the ''temporary rule.'' The intent of the NPS was that it would be superseded after 3 years by a long-term rule. The 2004 Rule had 10 specific provisions within it that actually authorized the use of snowmobiles and snowcoaches in the Parks, but only through the winter of 2006–2007. Thus, while the 2004 Rule is currently in effect as a result of the vacatur and remand, it provides no authority to operate either snowmobiles or snowcoaches in the Parks. As a result of the terms of the 2004 rule, the NPS does not have the administrative authority after 2007 to amend the rule or otherwise authorize the use of either snowmobiles or snowcoaches except through another rulemaking process.

In light of the significant disruption that would be caused to persons planning to visit the Parks this winter, and to communities and businesses that would be severely affected, the NPS has determined that in order to restore the authority to allow oversnow vehicle use of the Parks, a new Interim Winter Use Plan supported by an environmental assessment is required. The parks' Congressional delegation, as well as others, requested the NPS administratively address provision of motorized winter use. This proposed rule is based on the preferred alternative identified in the 2008 Winter Use Plans Environmental Assessment that is concurrently available for public review and comment. If promulgated, this rule would govern winter use in Yellowstone from 2008–2011 and would provide long term direction for Grand Teton and the Parkway. During this time, NPS will determine a long-range strategy for Yellowstone winter use.

Park Resource Issues

The Environmental Assessment supporting this proposed rule analyzes the environmental impacts of two alternatives for the management of winter use in the parks. The major issues analyzed in the EA include social and economic issues, human health and safety, wildlife, air quality, natural soundscape, visitor use and access, and visitor experience. The impacts associated with each of the alternatives are detailed in the EA and are available at the following site: *http://parkplanning.nps.gov.* Additional information is available online at: *http://www.nps.gov/yell/planyourvisit/winteruse.htm* and *http://www.nps.gov/grte.*

Impairment and Conservation of Park Resources and Values

In addition to determining the environmental consequences of the alternatives, NPS policy requires analysis of potential effects to determine whether actions would impair park resources. In managing National Park System units, the NPS may undertake actions that have both beneficial and adverse impacts on park resources and values. As NPS Management Policies explain (1.4.7.1), ''Virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that the particular use must be disallowed.'' The NPS is generally prohibited by law from taking or authorizing any action that would or is likely to impair park resources and values. Impairment is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. The responsible NPS manager generally has significant discretion to determine what impacts are allowed that would not impair park resources.

The NPS is also required to conserve the resources and values of the National Park System units and to prioritize the conservation of park resources over their use whenever the two are found to be in conflict. The NPS complies with this mandate by ensuring that a proposed use of the parks will not result in unacceptable impacts to park resources and values, and by further allowing impacts to park resources only when allowing the impacts is appropriate to fulfill the purposes of the park and necessary (meaning that the impacts are unavoidable and incapable of further mitigation in light of the authorized appropriate use).

The 2001 Rule recognized that, ''achieving compliance with the applicable legal requirements while still allowing snowmobile use would require very strict limits on the numbers of both snowmobiles and snowcoaches.'' Thus, it recognized that some snowmobile and snowcoach use could possibly be accommodated in the parks through appropriate management actions without resulting in impairment of park resources and values. The 2003 SEIS, 2004 EA, and 2007 EIS reinforced these conclusions.

Over the last four winter seasons, the parks were intensively managed in order to provide a heightened protection to the environment and prevent the impairment of park resources and values. The 2004 plan guided the first three seasons, while the 2007 plan guided the 2007–2008 season under essentially the same rules. Thus, even though two separate and distinct rules governed winter use of the Parks during this 4-year period, for brevity that period of time will simply be referred to hereinafter as being guided by the ''2004 plan.''

During this time, the cumulative number of snowmobiles entering the parks was much less than the number under the allowable daily limits. In Yellowstone, use averaged somewhat less than 300 snowmobiles per day, with a peak of 557, well under the daily limit of 720. Actual numbers in Grand Teton and the Parkway were only a small fraction of what was allowed, and therefore only a fraction of what the park managers had determined to be well within the legally permissible impact.

During this 4-year period, there were strict requirements on snowmobiles and snowcoaches, along with a comprehensive monitoring program. Monitoring efforts focused on air

quality, natural soundscapes, wildlife, employee health and safety, and visitor experience. Daily entry limits were established that represented use levels slightly below the historic average numbers of snowmobiles entering Yellowstone, thereby eliminating the much higher peak use days experienced in the past. The reduced numbers of snowmobiles contributed to fewer conflicts with wildlife, fewer air and noise emissions, and improved road conditions. Limits on the numbers of snowmobiles also provided park managers with more predictable winter use patterns and an assurance that use could not increase.

Under the 2004 plan, all snowmobilers entering Yellowstone were accompanied by a commercial guide. This requirement reduced conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercial guides must also have control over their clientele, which greatly reduces unsafe and illegal snowmobile use. In this way, guides ensure that park regulations are observed and provide a safer experience for visitors. The requirement that all snowmobilers travel with commercial guides also benefits natural soundscapes, since commercially guided parties tend to travel in relatively large groups, resulting in longer periods when snowmobile sound is not audible.

Finally, the 2004 plan required that all recreational snowmobiles entering the parks meet NPS air and sound emissions requirements. This condition, along with air emissions requirements for snowcoaches, ensured that the vast majority of recreational over-snow vehicles operating in the parks employed up-to-date emissions control equipment, and has resulted in improvements in air quality and natural soundscapes.

This proposed rule is based on Alternative 2 of the 2008 EA which, while imposing a daily limit of only 318 snowmobile entries for Yellowstone, is similar in all other significant respects to the 2004 plan. To be sure, the NPS continues to believe that it could legally permit significantly higher levels of snowmobiles within the park. The 2008 EA, however, was prepared in part as a matter of comity in light of the DC District Court decision vacating the 2007 rule, even though that decision is not yet final. For this reason, and for the reasons described further in the EA supporting this proposed rule, the NPS believes implementation of Alternative 2 is far below any limit that would result in the impairment of park resources and values.

The NPS has also determined that implementation of Alternative 2 and the proposed rule would not result in unacceptable impacts to park resources or values. As disclosed in the EA, the adverse impacts to wildlife would be negligible to minor, due to moderate levels of visitor use (with possible moderate effects on swans and eagles). Guiding would minimize most such effects. For soundscapes, the adverse impacts would be negligible to moderate for Yellowstone due to audibility and maximum sound levels, and minor for Grand Teton and the Parkway. Air quality impacts in all three parks are forecast to be negligible because the air and sound emissions requirements and strict daily entry limits will restrict emissions. Impacts on visitor and employee health and safety in Yellowstone are expected to be moderately adverse due to possible high snowmobile noise exposure levels and avalanche danger at Sylvan Pass, but mitigated in several ways. In Grand Teton, risk levels would be expected to be less, so the adverse effects there are predicted to be minor. As described in the EA, the NPS's threshold for considering whether there could be an impairment is based on *major* (or significant) effects. The EA identified less than major effects on wildlife, natural soundscapes, and air quality for Alternative 2. Indeed, the NPS has not determined that any snowmobile use over the past 4 years—which included daily usage at times nearly double the daily limit now adopted—imposed any impairment of park resources. Guided by this analysis and the superintendents' professional judgment, there would be no impairment of park resources and values from implementation of the proposed rule.

Finally, the NPS has determined that the impacts associated with the proposed oversnow vehicle use, and which are described at length in the EA, are both appropriate and necessary to fulfill the purposes of the park.

Section 1.5 of *Management Policies* (2006), ''Appropriate Use of the Parks,'' directs that the National Park Service must ensure that park uses that are allowed would not cause impairment of, or unacceptable impacts on, park resources and values. A new form of park use may be allowed within a park only after a determination has been made in the professional judgment of the park manager that it will not result in unacceptable impacts. In addition, section 8.1.2 of the *Management Policies* (2006), ''Process for Determining Appropriate Uses,'' directs the Service to evaluate the proposed use's consistency with applicable laws, executive orders, regulations, and policies; consistency with existing plans for public use and resource management; actual and potential effects on park resources and values; total costs to the Service; and whether the public interest will be served. Finally, section 1.5 of the *Management Policies* directs park superintendents to continually monitor all park uses to prevent unanticipated and unacceptable impacts. If unanticipated and unacceptable impacts occur, section 1.5 directs the superintendent to engage in a thoughtful deliberative process to further manage or constrain the use, or discontinue it.

The EA supporting this proposed rule contains the above-described evaluation of the proposed oversnow vehicle use. In addition, the EA demonstrates that no unacceptable impacts are anticipated as a result of the proposed use. Finally, the preferred alternative in the EA establishes a comprehensive monitoring and adaptive management plan to ensure that no unanticipated or unacceptable impacts will occur. On this basis, the NPS has determined that the proposed oversnow vehicle use is appropriate to fulfill the purposes of the park.

The NPS has also determined that the proposed oversnow use is necessary to fulfill the purposes of the park. Section 8.2 of *Management Policies* confirms that enjoyment of park resources and values by the people of the United States is one of the fundamental purposes of all parks. That Section further states: ''To provide for enjoyment of the parks, the National Park Service will encourage visitor use activities that are appropriate to the purpose for which the park was established, and are inspirational, educational, or healthful, and otherwise appropriate to the park environment; and will foster an understanding of and appreciation for park resources and values, or will promote enjoyment through a direct association with, interaction with, or relation to park resources; and can be sustained without causing unacceptable impacts to park resources and values.''

As explained in the EA, oversnow vehicular winter use of Yellowstone National Park has been occurring since 1949, and snowmobiles have been used for 45 of the park's 136 years. Distances between attractions at Yellowstone are great, and some form of vehicular access is needed to access various destination areas. Snowmobiles and snowcoaches are used for this purpose in the winter just as private vehicles and buses are

used in the summer. Finally, snowmobiles and snowcoaches each provide very different experiences, in that they provide varying levels of direct interaction with the Park's resources and values.

Description of the Proposed Rule

The proposed regulations are similar in many respects to the plans and rules that have been in effect the last four winter seasons. Thus, many of the regulations regarding operating conditions, designated routes, and restricted hours of operation have been in effect and enforced by the NPS for several years under the authority of 36 CFR Part 7 or 36 CFR 1.5. One notable difference, however, is that the number of snowmobiles allowed to enter Yellowstone each day has been reduced to 318. As noted above, the NPS does not consider this number to be the maximum number of snowmobiles that may be permitted within the Park consistent with the *Management Policies,* and instead has chosen this number to be unquestionably within both the NEPA standard for significance and the NPS standards for impairment. In addition, certain changes have been made to the routes that are designated for snowmobile use in Grand Teton and the Parkway, as well as changes to the daily entry limits in those parks.

The NPS has found that the interim regulations that have been in effect for the past four winter seasons have resulted in quieter conditions, clean air, fewer wildlife impacts, and much improved visitor safety and experiences. The NPS has further concluded that OSV use authorized by the interim regulations did not cause unacceptable impacts or impairment to park resources and values. The NPS believes that these proposed regulations will continue to produce similar results and that these results will not cause impairment of park resources.

Monitoring

Scientific studies and monitoring of winter visitor use and park resources (including air quality, natural soundscapes, wildlife, employee health and safety, water quality, and visitor experience) will continue under the 2008 Plan. Selected areas of the parks, including sections of roads, will be closed to visitor use if these studies and monitoring indicate that human presence or activities have a substantial effect on wildlife or other park resources that cannot otherwise be mitigated. A one-year notice will be provided before any such closure would be implemented unless immediate closure is deemed necessary to avoid impairment of park resources. The superintendent will continue to have the authority under 36 CFR 1.5 to take emergency actions to protect park resources or values.

Air and Sound Emissions Requirements

To mitigate impacts to air quality and the natural soundscape, the NPS is proposing to continue the requirement that all recreational snowmobiles meet air and sound emission restrictions to operate in the parks, with limited exceptions. For air emissions restrictions, the requirement means that all snowmobiles must achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide, relative to EPA's baseline emissions assumptions for conventional two-stroke snowmobiles. For sound restrictions, snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). The superintendent will maintain a list of approved snowmobile makes, models, and year of manufacture that meet the NPS requirements. For the winter of 2007–2008, the NPS certified 47 different snowmobile models (from various manufacturers; model years 2002–2008) as meeting the requirements. Generally, each snowmobile model will be approved for entry into the parks for 6 winter seasons after it is first listed (for example, for the 2008–2009 winter season, 2002 model year snowmobiles would no longer be certified). Based on NPS experience, 6 years represents the typical useful life of a snowmobile, and thus 6 years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. This length of time is consistent with the deterioration factors used in EPA's regulations pertaining to snowmobiles. The NPS recognizes that some privately owned snowmobiles used predominantly for ice fishing on Jackson Lake may have relatively low mileages even after 6 years of use, and therefore may not have experienced the type of deterioration that would cause them to fail NPS air and sound emissions requirements. The certification period for snowmobiles being operated on Jackson Lake will still be considered to be 6 years, but it may be extended up to a total of 10 years as long as the snowmobile's mileage does not exceed 6,000 miles.

To comply with the air emissions restrictions, the NPS proposes to continue the requirement that began with the 2005 model year, that all snowmobiles must be certified under 40 CFR 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. Snowmobiles must be tested on a five-mode engine dynamometer, consistent with the test procedures specified by EPA (40 CFR 1051 and 1065). Other test methods could be approved by the NPS.

The NPS proposes to retain the use of the FEL method for demonstrating compliance with the air emissions requirements because it has several advantages. First, use of FEL will ensure that all individual snowmobiles entering the parks achieve our emissions requirements, unless modified or damaged (under this proposed regulation, snowmobiles which are modified in such a way as to increase air or sound emissions will not be in compliance with the NPS requirements and therefore not permitted to enter the parks). Use of FEL will also represent the least amount of administrative burden on the snowmobile manufacturers to demonstrate compliance with NPS requirements because FEL data are already provided to EPA by the manufacturers. Further, the EPA has the authority to ensure that manufacturers' claims on their FEL applications are valid. EPA also requires that manufacturers conduct production line testing (PLT) to demonstrate that machines being manufactured actually meet the certification levels. If PLT indicates that emissions exceed the FEL levels, the manufacturer is required to take corrective action. Through EPA's ability to audit manufacturers' emissions claims, the NPS will have sufficient assurance that emissions information and documentation will be reviewed and enforced by the EPA. FEL also takes into account other factors, such as the deterioration rate of snowmobiles (some snowmobiles may produce more emissions as they age), lab-to-lab variability, test-to-test variability, and production line variance. In addition, under the EPA's regulations, all snowmobiles manufactured must be labeled with FEL air emissions information. This will help to ensure that our emissions requirements are consistent with these labels and the use of FEL will avoid potential confusion for consumers.

To determine compliance with the NPS sound emission restrictions, snowmobiles must be tested using SAE J192 (revised 1985) test procedures. The NPS recognizes that the SAE updated these test procedures in 2003; however, the changes between the 2003 and 1985 test procedures could alter the measurement results. The requirement was initially established using 1985 test

procedures (in addition to information provided by industry and modeling). Therefore, to be consistent with our requirements, we will continue to use the 1985 test. We also understand that an update to the 2003 J192 procedures may be underway. We are interested in transitioning to the newer J192 test procedures, and we will continue to evaluate this issue after these regulations are implemented. Other test methods could be approved by NPS on a case-by-case basis.

The NPS requirement for sound was established by reviewing individual machine results from side-by-side testing performed by the NPS contractor, Harris Miller Miller & Hanson Inc. (HMMH) and the State of Wyoming's contractor, Jackson Hole Scientific Investigations (JHSI). Six four-stroke snowmobiles were tested for sound emissions. These emission reports independently concluded that all the snowmobiles tested between 69.6 and 77.0 dB(A) using the J192 protocol. On average, the HMMH and JHSI studies measured four-strokes at 73.1 and 72.8 dB(A) at full throttle, respectively. The SAE J192 (revised 1985) test also allows for a tolerance of 2 dB(A) over the sound limit to account for variations in weather, snow conditions, and other factors.

Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected (as measured at or near the test site). This exception to the SAE J192 test procedures maintains consistency with the testing conditions used to determine the sound emissions requirement. This reduced barometric pressure allowance is necessary since snowmobiles were tested at the high elevation of Yellowstone National Park, where atmospheric pressure is lower than the SAE J192's requirements due to the park's elevation. Testing data indicate that snowmobiles test quieter at high elevation, and therefore may be able to pass our requirements at higher elevations but fail when tests are conducted near sea level.

NPS will annually publish a list of snowmobile makes, models, and year of manufacture that meet the NPS requirements. Snowmobile manufacturers may demonstrate that snowmobiles are compliant with the air emissions requirements by submitting a copy of their application used to demonstrate compliance with EPA's general snowmobile regulation to the NPS (indicating FEL). We will accept this application information from manufacturers in support of conditionally certifying a snowmobile as meeting NPS requirements, pending review and certification by EPA at the same emissions levels identified in the application. Should EPA certify the snowmobile at a level that would no longer meet NPS requirements, this snowmobile would no longer be considered to be compliant and would be phased out according to a schedule determined by the NPS to be appropriate. For sound emissions, snowmobile manufacturers could submit their existing Snowmobile Safety and Certification Committee (SSCC) sound level certification form. Under the SSCC machine safety standards program, snowmobiles are certified by an independent testing company as complying with all SSCC safety standards, including sound standards. This regulation does not require the SSCC form specifically, as there could be other acceptable documentation in the future. The NPS will work cooperatively with the snowmobile manufacturers on appropriate documentation. The NPS intends to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program. When certifying snowmobiles as meeting NPS requirements, the NPS will announce how long the certification applies. Generally, each snowmobile model would be approved for entry into the parks for six winter seasons after it was first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant.

Individual snowmobiles modified in such a way as to increase sound and air emissions of HC and CO beyond the proposed emission restrictions would be denied entry to the parks. It would be the responsibility of the end users and guides and outfitters to ensure that their oversnow vehicles, whether snowmobiles or snowcoaches, comply with all applicable restrictions. Emission and sound requirements for snowcoaches are described below. The requirement in Yellowstone that all snowmobilers travel with commercial guides will assist NPS in enforcing the requirements, since businesses providing commercial guiding services in the parks are responsible under their contracts with the park to ensure that their clients use only NPS-approved snowmobiles. In addition, these businesses are required to ensure that snowmobiles used in the park are not modified in such a way as to increase sound or air emissions, and that snowmobiles are properly maintained.

All commercially guided recreational snowmobiles operating within Yellowstone would be required to meet the NPS air and sound emissions requirements. Snowmobiles being operated on the Cave Falls road, which extends approximately one mile into the park from the adjacent national forest, would be exempt from the requirements. In Grand Teton and the Parkway, all recreational snowmobiles operating on Jackson Lake must meet the air and sound emissions requirements; however, snowmobiles being operated on the Grassy Lake Road would not be required to meet them. Use of the Grassy Lake Road is predominantly to provide access to the adjoining Targhee National Forest, where such requirements are not in effect, and is similar to other routes that the NPS designates to provide snowmobile access to adjacent public lands without such restrictions. Any commercially guided snowmobiles authorized to operate in the Parkway or Grand Teton will be required to meet NPS air and sound emissions requirements.

The University of Denver conducted winter emissions measurements in YNP that involved the collection of emissions data from in-use snowcoaches and snowmobiles in February 2005 and February 2006. Results from that work indicate that while most snowcoaches have lower emissions per person than two-stroke snowmobiles, the snowcoach fleet could be modernized to reduce carbon monoxide (CO) and hydrocarbon (HC) emissions. This work also supports snowmobile air emissions requirements and the development of snowcoach air emission requirements.

Under concessions contracts issued in 2003, 78 snowcoaches are currently authorized to operate in Yellowstone. Approximately 29 of these snowcoaches were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured before 1983 and are referred to as ''historic snowcoaches'' for the purpose of this rulemaking. All other snowcoaches are passenger vans or light buses that have been converted for oversnow travel using tracks and/or skis. During the winter of 2007–2008, an average of 35 snowcoaches entered Yellowstone each day.

In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers (Lela and White 2002). In 2004, EPA began phasing-in Tier 2 emissions standards for multi-passenger vans, and they will be fully phased-in by 2009.

Tier 2 standards will require that vehicles be even cleaner than Tier 1, and full emission controls will function more of the time.

During the duration of this temporary plan, all non-historic snowcoaches must meet air emission requirements, which will be the EPA emissions standards in effect when the vehicle was manufactured. This will be enforced by ensuring that all critical emission-related exhaust components are functioning properly. Malfunctioning critical emissions-related components must be replaced with the original equipment manufacturer (OEM) component where possible. If OEM parts are not available, aftermarket parts may be used. In general, catalysts that have exceeded their useful life must be replaced unless the operator can demonstrate the catalyst is functioning properly. Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes. Individual snowcoaches may be subject to periodic inspections to determine compliance with emission and sound requirements.

However, during the duration of this plan, the NPS will encourage snowcoach operators to replace or retrofit their coaches with models that meet higher emission standards. In the 2007 FEIS, the NPS anticipated that snowcoach air and sound emission requirements would go into effect in 2011–2012, after the duration of this temporary plan. Thus these recommendations will assist snowcoach operators anticipating future possible requirements.

During these intervening years, the NPS will recommend that diesel vehicles with a Gross Vehicle Weight Rating (GVWR) of 8,500 pounds or more meet, at a minimum, the EPA 2004 ''engine configuration certified'' diesel air emission standards. The NPS will further recommend that diesel vehicles meet the 2007 ''engine configuration certified'' air emission standard. If a new vehicle is being purchased, the NPS recommends that operators confirm that the vehicle has, at a minimum, an engine that meets the 2004 standard. If it is the operators' intention to purchase a vehicle with the newest diesel emission technology, the NPS recommends that the vehicle has a ''2007 standard'' engine. If a diesel engine is being purchased for retrofit into an existing vehicle, the above recommendations apply. If the diesel vehicle has a GVWR between 8,500 and 10,000 pounds, there may be a configuration that meets the EPA light duty Tier II standards, which would achieve the best results from an emissions perspective.

For air emissions from gasoline vehicle air emissions, the NPS will recommend the vehicles engine meet EPA Tier 1 emission requirements. The NPS will further recommend that gasoline vehicles meeting EPA Tier II requirements be used. If a new vehicle is being purchased, the NPS will recommend the vehicle has, at a minimum, an engine that meets the Tier I requirements, or more ideally, the vehicle will meet Tier II requirements. If an existing gasoline engine and exhaust system is being retrofitted, the vehicle should have, at a minimum, a computer controlled, port-fuel injected engine and a catalytic converter in the exhaust system. Regarding the sound emission recommendations, the NPS will recommend that new and retrofitted snowcoaches not exceed 73 dBA when measured by operating the coach at or near full throttle for the test cycle. Thus a coach might be traveling at a speed of 25–30 miles per hour for the pass-by test to determine if the vehicle produces no more than 73 dBA.

The restrictions on air and sound emissions proposed in this rule are not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to ''promote and regulate'' the use of national parks ''by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Further, the Secretary is expressly authorized by 16 U.S.C. 3 to ''make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks. * * *'' This exercise of the NPS Organic Act authority is not an effort by NPS to regulate manufacturers and is consistent with Sec. 310 of the Clean Air Act.

Since 2001, Yellowstone and Grand Teton National Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in use throughout the parks. NPS now uses these snowmobiles for most administrative uses. However, NPS recognizes that some administrative applications, such as off-trail boundary patrols in deep powder, towing heavy equipment or disabled sleds, search and rescue, or law enforcement uses may require additional power beyond that supplied by currently available snowmobiles that meet the air and sound emissions requirements. In these limited cases, NPS may use snowmobiles that do not meet the requirements proposed in this rule.

The emission and sound limit requirements for snowmobiles (and the gradual implementation of those requirements for snowcoaches) would result in low levels of air pollution within the parks in the winter, as evidenced by the past four years of air quality monitoring results that indicate excellent air quality. Similarly, soundscapes monitoring indicates that sound from recreational oversnow vehicles are well within acceptable ranges. Therefore the air and sound emissions that would occur would not constitute unacceptable impacts or impairment, nor would they be inconsistent with the NPS mandate to conserve park resources.

Use of Commercial Guides

To mitigate impacts to natural soundscapes and wildlife, and for visitor and employee safety, the NPS is again proposing that all recreational snowmobiles operated in YNP must be accompanied by a commercial guide, except for those being operated on the one-mile segment of the Cave Falls road that extends into the park from the adjacent national forest. This guiding requirement will reduce conflicts with wildlife along roadways because guides are trained to lead visitors safely around the park with minimal disturbance to wildlife. Commercially guided parties also tend to be larger in size, which reduces the overall number of encounters with wildlife and reduces the amount of time over-snow vehicles are audible. Commercial guides are educated in safety and are knowledgeable about park rules. Commercial guides are required to exercise reasonable control over their clientele, which has proven to greatly reduce unsafe and illegal snowmobile use. Commercial guiding with contractual obligations to the NPS also allow for more effective enforcement of park rules by the NPS. These guides receive rigorous multi-day training, perform guiding duties as employees of a business, and are experts at interpreting the resources of the parks to their clients. Commercial guides are employed by local businesses; those jobs are not performed by NPS employees.

Commercial guides use a ''follow-the-leader'' approach, stopping often to talk

with the group. They lead snowmobiles single-file through the park, using hand signals to pass information down the line from one snowmobile to the next, which has proven to be effective. Signals are used to warn group members about wildlife and other road hazards, to indicate where to turn, and when to turn on or off the snowmobile. Further, all commercial guides are trained in basic first aid and CPR. In addition to first aid kits, they often carry satellite or cellular telephones, radios, and other equipment for emergency use. In this way, guides will ensure that park regulations are observed and will provide a safer experience for visitors.

Since the winter of 2003–2004, all snowmobilers in Yellowstone have been led by commercial guides, resulting in significant positive effects on visitor health and safety. Guides are effective at maintaining proper touring behavior, such as adherence to speed limits, staying on the groomed road surfaces, and other snowmobiling behaviors that are appropriate to safely and responsibly visit the park. Since implementation of the guiding program there have been pronounced reductions in the number of law enforcement incidents and accidents associated with the use of snowmobiles, even when accounting for the reduced number of snowmobilers relative to historic use levels. The use of guides has also had beneficial effects on wildlife since guides are trained to respond appropriately when encountering wildlife.

No more than eleven snowmobiles would be permitted in a group, including that of the guide. Individual snowmobiles may not be operated separately from a group within the park. No minimum group size requirement is necessary since commercially guided parties always have at least two snowmobiles—that of the guide and the customer. Moreover, as a practical matter, in recent winters, group size has averaged nearly seven snowmobiles per group.

Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. This will ensure that guided parties do not become separated. One-third mile will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide(s) to maintain control over the group and minimize the impacts on wildlife and natural soundscapes.

In the Parkway, all snowmobile parties traveling north from Flagg Ranch must be accompanied by a commercial guide. Otherwise, snowmobilers in Grand Teton and the Parkway do not have to be accompanied by a guide. The use of guides in Grand Teton and the Parkway is generally not required due to the low volume of use, the conditions for access to Jackson Lake for winter fishing, and the fact that use of the Grassy Lake Road is primarily to provide access to and from the adjoining national forest lands where guiding is not required.

Designated Routes

In Yellowstone, a number of changes are proposed in routes designated for snowmobile use based on analyses in the 2008 EA and experience with the management of winter use over the past four winters. Certain additional side roads will be open for snowmobile use in the afternoons, based on the successful experience of NPS with this time of day use on Firehole Canyon Drive. Virginia Cascades would be accessible only via ski and snowshoe, returning it to an earlier type of non-motorized use.

In Grand Teton and the Parkway, the NPS is proposing to discontinue operation and use of the CDST. Use of this route over the last four winters has averaged fewer than 15 snowmobiles per season and in light of the proposed requirements for entry into Yellowstone, the NPS has no reason to believe that there would be any significant increase in use of the CDST if it were to remain open. The NPS will continue to allow the State of Wyoming to groom the portion of the CDST along U.S. Highway 26/287 to its east boundary in order to provide access to adjacent public and private lands in Buffalo Valley.

Daily Snowmobile Limits

The number of snowmobiles and snowcoaches that could operate in the parks each day would be limited under this rule. These limits are intended to mitigate, even more than legally necessary, impacts to air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience, consistent with preventing unacceptable impacts and impairment to park resources and values. The daily entry limits for snowmobiles and snowcoaches in Yellowstone are identified in Table 1, and for Grand Teton and the Parkway in Table 2. Use limits identified in Table 1 include guides since commercial guides are counted towards the daily limits. For Yellowstone, the daily limits are identified for each entrance and location; for Grand Teton and the Parkway, the daily limits apply to total snowmobile use on the road segment and on Jackson Lake.

Limits are specifically identified for Old Faithful in this proposed rule since a park concessioner provides snowmobile rentals and commercial guiding services originating there. The limits for the North Entrance and Old Faithful allow additional flexibility in offering visitors the opportunity to experience the park. For example, some visitors choose to enter the park on a snowcoach tour, spend two or more nights at the Old Faithful Snow Lodge, and go on a commercially guided snowmobile tour of the park during their stay at Old Faithful.

TABLE 1—YELLOWSTONE DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Entrance	Commercially guided snowmobiles	Commercially guided snowcoaches
West Entrance	160	34
South Entrance *	114	13
East Entrance	20	2
North Entrance	** 12	13
Old Faithful	** 12	16
Cave Falls	*** 50	0

* Includes portion of the Parkway between Flagg Ranch and South Entrance.

** Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 24. For example, the concessioner could operate 16 snowmobiles at Old Faithful and 8 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

*** This use occurs on a short (approximately 1-mile segment) of road and is incidental to other snowmobiling activities in the Targhee National Forest. These users do not have to be accompanied by a guide.

TABLE 2—GRAND TETON AND THE PARKWAY DAILY SNOWMOBILE ENTRY LIMITS

Entrance	Snowmobiles
Grassy Lake Road (Flagg-Ashton Road)	*25
Jackson Lake	25

* Snowmobiles being operated on the Grassy Lake Road would not be required to meet NPS air and sound emissions requirements.

The purpose of these daily entry limits is to impose strict limits on the numbers of snowmobiles and snowcoaches that may use the parks in order to minimize resulting impacts, consistent with the NPS's mandate to conserve park resources and ensure that they are not impaired. While these limits do not constitute the maximum limit on snowmobiles that could be permitted in the Park, these limits are intended to continue to provide adequate snowmobile access to the Park under the current circumstances. Compared to historical use where peak days found as many as 1,700 snowmobiles in the parks, these limits represent a considerable reduction in peak day use, are less than the historic seasonal daily average of Yellowstone entries, and are clearly much less than the NPS has legal discretion to authorize consistent with the *Management Policies.* These limits would reduce snowmobile usage well below historic levels that were of particular concern in the 2000 ROD.

The daily snowmobile and snowcoach limits are based on the analysis contained in the EA, which concluded that these limits, combined with other elements of this rule, would prevent unacceptable impacts thus preventing impairment to park resources and values while allowing for an appropriate range of experiences available to park visitors.

Avalanche Management—Sylvan Pass

Sylvan Pass will be open under the 2008 Plan for oversnow travel (both motorized and non-motorized) for a limited core season, from December 22 through March 1 each year, subject to weather-related constraints and NPS fiscal, staff, infrastructural, equipment, and other safety-related capacities. A combination of avalanche mitigation techniques may be used, including risk assessment analyses as well as forecasting and helicopter and howitzer dispensed explosives. The results of previous safety evaluations of Sylvan Pass by the Occupational Health and Safety Administration and an Operational Risk Management Assessment will be reviewed and updated, and the NPS will evaluate additional avalanche mitigation techniques and risk assessment tools in order to further improve safety and visitor access.

From March 2 to March 15, the NPS will maintain the road segment from the East Entrance to a point approximately four miles west of the entrance station to provide for opportunities for cross-country skiing and snowshoeing. Limited snowmobile and snowcoach use will be allowed in order to provide drop-offs for such purposes.

This approach both addresses the concerns of the communities and the National Park Service. The City of Cody, Wyoming, as well as Park County, Wyoming, and the State of Wyoming have clearly articulated the importance of this route to the community and the historical relationship between Cody and Yellowstone's East Entrance. They have spoken for the businesses near Yellowstone's East Entrance and how those businesses have been negatively impacted in recent years by the changing patterns of winter visitation. They have stated how those businesses will continue to be adversely affected if the pass is closed to oversnow vehicle travel in the winter. The community and businesses have also stated the value they place on the certainty of the road being open in the winter and the importance of that certainty to their businesses and guests. NPS acknowledges those values and concerns and has carefully weighed those considerations.

Avalanche control at Sylvan Pass has long represented a safety concern to the National Park Service. The 2000 FEIS, the 2003 SEIS, the 2004 EA, and the 2007 FEIS all clearly identify the significant avalanche danger on Sylvan Pass, which has been well known for many years. Approximately 20 avalanche paths cross the road at Sylvan Pass. They average over 600 feet of vertical drop, and the East Entrance Road crosses the middle of several of the paths, putting travelers at risk of being caught in an avalanche. NPS employees must cross several uncontrolled avalanche paths to reach the howitzer used for discharging those avalanches, and the howitzer is at the base of a cliff prone to both rock-fall and additional avalanche activity (the howitzer cannot be moved without compromising its ability to reach all avalanche zones). Artillery shells sometimes fail to explode on impact, and unexploded rounds remain on the slopes, presenting year-round hazards to both employees and visitors, both in Yellowstone and the Shoshone National Forest. Natural avalanches can and do occur, both before and after howitzer use. Using a helicopter instead of a howitzer also is a high-risk activity because of other risks a helicopter contractor would have to incur.

The NPS may use a combination of techniques that have been used in the past (howitzer and helicopter), as well as techniques that may be available in the future. Area staff may use whichever tool is the safest and most appropriate for a given situation, with the full understanding that safety of employees and visitors comes first. Employees in the field make the operational determination when safety criteria have been met, and operations can be conducted with acceptable levels of risk. The NPS will not take unacceptable risks. When safety criteria have been met, the pass will be open; when they have not been met, the pass will remain closed. As with past winters, extended closures of the pass may occur.

Section-by-Section Analysis

Sec. 7.13(l)(2) What terms do I need to know?

The NPS has included definitions for a variety of terms, including oversnow vehicle, designated oversnow route, and commercial guides. These definitions are also applicable to Grand Teton and the Parkway, § 7.22(g)(2) and § 7.21(a)(2), respectively. For snowmobiles, NPS is continuing to use the definition found at 36 CFR 1.4, and sees no need to alter that definition at this time. Earlier regulations specific to Yellowstone, Grand Teton and the Parkway referenced ''unplowed roadways'' but that terminology was changed to ''designated oversnow

routes'' to more accurately portray the condition of the route being used for oversnow travel. These routes remain entirely on roads or water surfaces used by motor vehicles and motorboats during other seasons and thus are consistent with the requirements in § 2.18. Earlier regulations also referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of machines will be developed in the future that can travel on snow, a definition for ''oversnow vehicle'' was developed to ensure that such new technology is subject to this regulation. When a particular requirement or restriction only applies to a certain type of machine (for example, some concession restrictions only apply to snowcoaches), the specific machine is stated and only applies to that type of vehicle, not all oversnow vehicles. However, oversnow vehicles that do not meet the strict definition of a snowcoach (i.e., both weight and passenger capacity) would be subject to the same requirements as snowmobiles. The definitions listed under § 7.13(l)(2) will apply to all three parks. These definitions may be clarified in future rulemakings based on changes in technology.

Sec. 7.13(l)(3) May I operate a snowmobile in Yellowstone National Park?

The authority to operate a snowmobile within Yellowstone, subject to use limits, guiding requirements, operating hours and dates, equipment requirements, and operations established elsewhere in this section, is provided in § 7.13(l)(3). Similarly, it is provided for Grand Teton in § 7.22(g)(3) and for the Parkway in § 7.21(a)(3). The authority to operate snowmobiles in Yellowstone would be limited to three winter seasons, terminating at the conclusion of the 2010–2011 season. This limitation is included because the rule is intended to be an interim regulation for Yellowstone, during which time the NPS will seek to develop a new long-term management plan and regulations to guide winter use of the park. In light of the highly controversial and complex nature of the issue and its history of litigation, the NPS believes that a 3-year interim period is the minimum necessary to provide sufficient time to complete whatever process will follow to guide long-term winter use management of the park. The 3-year limitation would not apply to Grand Teton and the Parkway. However, snowmobile use between Flagg Ranch and the South Entrance of Yellowstone would effectively be limited to a 3-year period because all such use is associated with trips into Yellowstone and controlled by concession contracts.

Sec. 7.13(l)(4) May I operate a snowcoach in Yellowstone National Park?

This paragraph continues the authority to operate snowcoaches in Yellowstone, and requires that they be commercially operated under a concessions contract. Similarly, the authority to operate snowcoaches in the Parkway is provided in § 7.21(a)(4). For Grand Teton, § 7.22(g)(4) continues the current prohibition on the operation of snowcoaches.

Similar to the 3-year limitation on snowmobile use described above, the authority to operate snowcoaches in Yellowstone would also be in effect only through the winter season of 2010–2011. Although the 3-year limitation on the authority to operate snowcoaches in the Parkway is not included in § 7.21(a)(4), snowcoach use would effectively be limited to a 3-year period since all such use is associated with trips into Yellowstone and controlled by concession contracts.

The NPS also proposes to continue the requirement that all non-historic snowcoaches meet the applicable EPA air emissions standards that were in effect at the time the vehicle was manufactured.

Sec. 7.13(l)(5) Must I operate a certain model of snowmobile?

This paragraph continues the requirement that only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in Yellowstone. Similarly, this requirement is described for Grand Teton and the Parkway in § 7.22(g)(5) and § 7.21(a)(5), respectively.

Sec. 7.13(l)(6) How will the Superintendent approve snowmobile makes, models, and year of manufacture for use in the park?

The NPS is not proposing any changes to the hydrocarbon and carbon monoxide emissions requirements for snowmobiles operating in the park. Snowmobiles must be certified under 40 CFR part 1051 to a Family Emission Limit (FEL) no greater than 15 g/kW-hr for hydrocarbons and an FEL no greater than 120 g/kW-hr for carbon monoxide. Changes are not proposed to the current requirement that snowmobiles must operate at or below 73 dBA.

For Grand Teton and the Parkway, the same requirements are contained in § 7.22(g)(6) and § 7.21(a)(6), respectively.

Sec. 7.13 (l)(7) Where may I operate my snowmobile in Yellowstone National Park?

See also § 7.22(g)(7) and § 7.21(a)(7) for Grand Teton and the Parkway. Specific routes are listed where snowmobiles may be operated, but this proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including, for example, the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

Sec. 7.13(l)(8) What routes are designated for snowcoach use?

See also § 7.21(a)(8) for the Parkway. In addition to the specific routes open to snowmobile use, snowcoaches may be operated on several other specific routes in Yellowstone. This proposed rule also provides latitude for the superintendent to modify those routes available for use. When determining what routes are available for use, the superintendent will use the criteria in § 2.18(c), and may also take other issues into consideration including the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of visitor use patterns, and in the interest of public safety and protection of park resources.

Sec. 7.13(l)(9) Must I travel with a commercial guide while snowmobiling in Yellowstone?

See also § 7.22(g)(8) and § 7.21(a)(9) for Grand Teton and the Parkway. The NPS is proposing to retain the requirement that all recreational snowmobile operators in Yellowstone be accompanied by a commercial guide. Parties must travel in groups of no more than eleven snowmobiles including that of the guide.

No changes are being proposed regarding guiding requirements for Grand Teton and the Parkway, where guides are not currently required except in the Parkway on the route between Flagg Ranch and the South Entrance of Yellowstone.

Sec. 7.13(l)(10) Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the park each day?

The NPS is proposing to change the number of snowmobiles allowed in Yellowstone each day from 720 to 318, and from 140 per day in Grand Teton and the Parkway to 50 (see § 7.22(g)(9) and § 7.21(a)(10)). The NPS is also proposing to establish a daily entry limit of 78 snowcoaches. This number conforms to the existing number authorized in concession contracts and reflects consideration of the analyses of impacts in the EA.

Sec. 7.13(l)(11) When may I operate my snowmobile or snowcoach?

See also § 7.22(g)(10) and § 7.21(a)(11) for Grand Teton and the Parkway. The NPS is not proposing any changes to the methods that the superintendent would use to determine operating hours and dates.

Sec. 7.13(l)(12) What other conditions apply to the operation of oversnow vehicles?

This section includes a variety of requirements regarding the operation of snowmobiles in the parks, such as drivers' license and registration requirements, operating procedures, requirements for headlights, brakes and other safety equipment, length of idling time, towing of sleds, and other requirements related to safety and resource impact considerations. No changes are being proposed in this section from the previous regulations. See also § 7.22(g)(11) for Grand Teton and § 7.21(a)(12) for the Parkway.

Sec. 7.13 (l)(13) What conditions apply to alcohol use while operating an oversnow vehicle?

The NPS is proposing no changes to the conditions applicable to the use of alcohol while operating oversnow vehicles. Although the regulations in 36 CFR 4.23 apply to oversnow vehicles, a provision was included in the 2004 regulations to address the issue of under-age drinking while operating a snowmobile, and snowcoach operators or snowmobile guides operating under the influence while performing services for others. Many states have adopted similar alcohol standards for under-age operators and commercial drivers and the NPS feels it is necessary to specifically include these regulations to help mitigate potential safety concerns.

The alcohol level for minors (anyone under the age of 21) is set at .02. Although the NPS endorses ''zero tolerance,'' a very low Blood Alcohol Content (BAC) is established to avoid a chance of a false reading. Mothers Against Drunk Driving and other organizations have endorsed such a general enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, will not be allowed.

In the case of snowcoach operators or snowmobile guides, a low BAC limit is also necessary. Persons operating a snowcoach are likely to be carrying 8 or more passengers in a vehicle with tracks or skis that is more challenging to operate than a wheeled vehicle, and on oversnow routes that could pose significant hazards should the driver not be paying close attention or have impaired judgment. Similarly, persons guiding others on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and for minimizing impacts to park wildlife and other resources. Should the guide's judgment be impaired, hazards such as wildlife on the road or snow obscured features, could endanger all members of the group in an unforgiving climate. For these reasons, the NPS is continuing to require that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the NPS has established a BAC limit of .04 for snowcoach operators and snowmobile guides. This is consistent with federal and state rules pertaining to BAC thresholds for someone with a commercial driver's license.

The same conditions apply within Grand Teton and the Parkway; see § 7.22(g)(12) and § 7.21(a)(13), respectively.

Sec. 7.13(l)(14) Do other NPS regulations apply to the use of oversnow vehicles?

See also § 7.22(g)(13) and § 7.22(a)(14) for Grand Teton and the Parkway, respectively. The NPS is not proposing any changes to the applicability of other NPS regulations concerning oversnow vehicle use.

Relevant portions of 36 CFR 2.18, including § 2.18(c), have been incorporated within these proposed regulations. Some portions of 36 CFR 2.18 and 2.19 are superseded by these proposed regulations, which allows these proposed regulations to govern maximum operating decibels, operating hours, and operator age (this is applicable to these park units only). In addition, 36 CFR 2.18(b) would not apply in Yellowstone, while it would apply in Grand Teton and the Parkway. This is due to the existing concurrent jurisdiction in Grand Teton and the Parkway. These two units are solely within the boundaries of the State of Wyoming and national park rangers work concurrently with state and county officers enforcing the laws of the State of Wyoming. The proposed rule also supersedes 36 CFR 2.19(b) in that it prohibits the towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, except in emergency situations. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other oversnow vehicles as long as no person or animal is hauled on them. Other provisions of 36 CFR Parts 1 and 2 continue to apply to the operation of oversnow vehicles unless specifically excluded here.

Sec. 7.13(l)(15) Are there any forms of non-motorized oversnow transportation allowed in the park?

See also § 7.22(g)(14) and § 7.21(a)(15) for Grand Teton and the Parkway, respectively. Non-motorized travel consisting of skiing, skating, snowshoeing, and walking are generally permitted. Yellowstone and Grand Teton have specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs or a vehicle) to prevent disturbance or harassment to wildlife. These restrictions have been in place for several years and would be reaffirmed under these regulations.

Sec. 7.13(l)(16) May I operate a snowplane in Yellowstone National Park?

See also § 7.22(g)(15) and § 7.21(a)(16) for Grand Teton and the Parkway. Before the winter of 2002–2003, snowplanes were allowed on Jackson Lake within GTNP under a permit system. Based on the analysis set forth in the 2000 EIS and ROD and incorporated by reference into three subsequent rulemaking processes, the NPS found that the use of snowplanes results in impairment of the natural soundscape and opportunities for enjoyment of the park by visitors in violation of the NPS Organic Act. Additionally, with their unguarded propellers and high travel speeds, snowplanes present unacceptable safety risks. Accordingly, snowplanes have been banned since 2001. On June 27, 2007, the U.S. District Court for the District of Wyoming upheld the prohibition on the use of snowplanes; the case is currently on appeal. To date, NPS is not aware of any new or

additional information regarding snowplanes that would suggest their use would not impair park resources and values. As a result, and to avoid any uncertainty based on their previous use on Jackson Lake, this proposed rule includes language that specifically continues the prohibition of snowplanes in each of these parks.

Sec. 7.13(l)(17) Is violating any of the provisions of this section prohibited?

Some magistrates have interpreted the lack of a specific prohibitory statement in regulations to be ambiguous and therefore unenforceable. Although it would seem to be implicit that each instance of a failure to abide by specific requirements is a separate violation, the proposed regulation contains clarifying language for this purpose. Each occurrence of non-compliance with these regulations is a separate violation. However, it should also be noted that the individual regulatory provisions (i.e., each of the separately numbered subparagraphs throughout these three sections) could be violated individually and are of varying severity. Thus, each subparagraph violated can and should receive an individual fine in accordance with the issuance of the park's bail schedule as issued by the appropriate magistrate. It is not intended that violations of multiple subparagraphs of these regulations be treated as a single violation or subject only to a single fine. See also § 7.22(g)(20) and § 7.21(a)(17) for Grand Teton and the Parkway.

Sec. 7.22(g)(16) May I continue to access public lands via snowmobile through the park?

The NPS is proposing to continue providing access to public lands that are adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide such access; the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(17) specifies that the routes designated in § 7.22(g)(16) may be used only to gain direct access to public lands located adjacent to the park boundary.

Sec. 7.22(g)(18) May I continue to access private property within or adjacent to the park via snowmobile?

The NPS is proposing to continue providing access to inholdings or private lands adjacent to Grand Teton National Park, consistent with the requirements found in the park's enabling legislation. Specific routes are designated to provide access, and the requirements established for air and sound emissions, guiding and licensing, snowmobile operator age, and daily entry limits do not apply on these routes. Section 7.22(g)(19) specifies that the routes designated in § 7.22(g)(18) may be used only to gain direct access to private lands located within or adjacent to the park boundary, and is authorized only for the landowners and their representatives or guests.

Summary of Economic Analysis

Introduction

The results of the cost-benefit analyses indicate that the costs of the proposed regulatory action are justified by the associated benefits. Specifically, this proposed regulatory action will not have an annual economic effect of $100 million, and will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government relative to the Alternative 1 baseline. Rather, this proposed regulatory action is expected to improve economic efficiency. Further, this proposed regulatory action will have positive impacts on small entities relative to the Alternative 1 baseline.

Cost-Benefit Analysis

NPS has considered the impacts of the Alternative 1 baseline and the Alternative 2 action alternatives, and determined that the resulting winter season park visitation (including YNP, GTNP, and the Parkway) under those two scenarios is represented by Table 3 below. These visitation levels are identical to relevant visitation levels during the 2005–06 winter season in YNP (Duffield and Neher, August 2006), which reflect recent trends for the GYA. Alternative 1 (baseline) includes only North Entrance wheeled vehicle entries plus park-wide ski entries, while Alternative 2 (action) also includes snowmobile and snowcoach entries. Visitation changes in GTNP and the Parkway between the two alternatives are considered *de minimis*.

TABLE 3—WINTER SEASON PARK VISITATION IN THE GREATER YELLOWSTONE AREA UNDER ALTERNATIVES 1 AND 2

	Visitor-Days			
Alternative	Snowmobile	Snowcoach	Wheeled vehicle and ski	Total
1 (Baseline)	0	0	40,029	40,029
2 (Action)	28,833	19,856	40,029	88,718
Change from 1 to 2	+28,833	+19,856	0	+48,689

Benefits and Costs

As indicated in Table 3, park visitors to the GYA are expected to gain benefits from increased snowmobile and snowcoach access under Alternative 2 relative to the Alternative 1 baseline. These benefits are termed ''consumer surplus,'' which includes the maximum willingness to pay for such activities minus the costs of participation. Therefore, consumer surplus measures the net benefits of visitation. NPS also estimates that businesses would receive benefits from Alternative 2 relative to the Alternative 1 baseline. These benefits would arise from the provision of additional services associated with the increased snowmobile and snowcoach visitation under Alternative 2. These benefits are termed ''producer surplus,'' which are a net benefits measure similar to the consumer surplus benefits accruing to visitors. NPS was able to quantify certain benefits in the current analysis. Those consumer and producer surplus benefits that could be quantified under Alternative 2 are summarized in Table 4.

TABLE 4—QUANTIFIED CONSUMER AND PRODUCER SURPLUS BENEFITS UNDER ALTERNATIVE 2

Discount rate	Total present value	Amortized annual value
3 percent	$37,901,000	$13,399,000
7 percent	35,163,000	13,399,000

Office of Management and Budget Circular A–4 recommends a 7 percent discount rate in general, and a 3 percent discount rate when analyzing the impacts to private consumption. Values are 2003 dollars rounded to the nearest 1,000.

Although costs could not be quantified, it is possible for visitors who do not access the parks by snowmobile or snowcoach to suffer consumer surplus losses under Alternative 2 due to interactions with those visitor uses. However, given recent visitor trends and the relatively low level of snowmobile and snowcoach use contemplated under Alternative 2, it is not possible at this time to estimate any such reductions in visitor use. Therefore, while recognizing that such losses to visitor benefits are possible under Alternative 2, NPS is unable to quantify those losses. Further, NPS recognizes that it is possible that some skiers may be worse off under the Alternative 1 baseline if they would use snowmobiles or snowcoaches to access trails within the parks. In addition to these potential costs, the proposed winter use plans may discourage additional visits to the parks by people who do not currently visit the parks in the winter, but might if snowmobiles and snowcoaches were prohibited from the parks. The Winter 2002–03 Visitor Survey was based only on current visitors to the parks and therefore does not reflect the values of those people.

Costs to ''passive'' users of the parks may also result from the proposed winter use plans. These users are individuals who do not directly use park resources and perhaps never intend to do so. Economists refer to the values these users hold using several different terms, including non-use values, passive use values, and existence values. The underlying motivations for these values include the satisfaction of knowing that a particular resource is protected or a desire to preserve the resource for future generations. Under the proposed winter use plans, these users may be less confident that park resources are being protected, and will therefore incur costs arising from the knowledge that park resources may be compromised by the presence of snowmobiles and snowcoaches.

Other costs that could not be quantified include the costs of road grooming and maintenance, winter staffing, snowmobile and snowcoach safety hazards, and law enforcement. In general, increasing snowmobile and snowcoach activity in the parks would require NPS to redirect resources away from other activities that would protect park resources and address park management needs.

Explanation of Selected Preferred Alternative

The preferred alternative in the EA was selected because it best balances winter use with protection of park resources to ensure that the impairment of, or unacceptable impacts to, park resources and values does not occur. The preferred alternative demonstrates the NPS commitment to monitor winter use and to use the results to adjust the winter use program. The results of the monitoring program, including data obtained regarding air quality, wildlife, soundscapes, and health and safety, were used in formulating the alternatives in the EA. The preferred alternative applies the lessons learned over the last several winters relative to commercial guiding, which demonstrated, among other things, that 100% commercial guiding has been very successful and offers the best opportunity for achieving goals of protecting park resources and allowing balanced use of the parks. Law enforcement incidents have been reduced well below historic numbers, even after taking into account reduced visitation. That reduction is attributed to the quality of the guided program.

The preferred alternative uses strictly limited oversnow vehicle numbers, combined with air and sound emission requirements and 100% commercial guiding, to help ensure that the purpose and need for the environmental impact statement is best met. With access via snowmobile, snowcoaches, or non-motorized means, park visitors will have a range of appropriate winter recreational opportunities. With the significant restrictions built into snowmobile and snowcoach use, this plan also ensures that these recreational activities will not impair or irreparably harm park resources or values.

The preferred alternative also supports the communities and businesses both near and far from the parks and will encourage them to have an economically sustainable winter recreation program that relies on a variety of modes for access to the parks in the winter. Peak snowmobile numbers allowed under the preferred alternative are well below the historic averages, but the snowmobile and snowcoach limits should provide a viable program for winter access to the parks.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These conclusions are based on the report ''Economic Analysis: Proposed Temporary Winter Use Plans for the Greater Yellowstone Area for Winter Seasons 2008–09 through 2010–11'' (Peacock, October 19, 2008).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) OMB has determined that this rule raises novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS has been the subject of numerous lawsuits regarding winter use management.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will have a significant positive economic

effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, an Initial Regulatory Flexibility Analysis has been conducted. This analysis is contained in the report ''Economic Analysis: Proposed Temporary Winter Use Plans for the Greater Yellowstone Area for Winter Seasons 2008–09 through 2010–11'' (Peacock, October 19, 2008).

Only one action alternative was considered, Alternative 2. The Initial Regulatory Flexibility Analysis concludes that Alternative 2 will have positive impacts and will not have significant negative impacts on small businesses relative to the Alternative 1 baseline.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Greater Yellowstone Area, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Access to private property located within or adjacent to the parks will be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

A 2008 Winter Use Plans Environmental Assessment (2008 EA) has been prepared and is or will shortly be available for public review and comment. The EA is available for review by contacting Yellowstone or Grand Teton Management Assistant's Offices or at *http://parkplanning.nps.gov/.*

Comments are being solicited separately for the 2008 EA and this proposed rule. See the Public Participation section for more information on how to comment on the EA.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government to Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2:

The NPS has evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the previous winter use planning documents. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Administrative Procedure Act

This proposed rule is available for public review and comment for a period of 15-days. Under more typical circumstances the NPS would normally provide a 60-day comment period. In this case, the Order that was issued by the DC District Court vacated the 2007 Rule only 90 days prior to the scheduled start of the winter season in the Parks, and has resulted in the need for an expedited rulemaking process. For this regulation, we have determined that in order for a final rule to become effective on or about December 15, 2008, it is necessary to reduce the normal review and comment period to 15 days. Good cause exists for the shortened comment period for the following reasons:

(1) The NPS has received voluminous public comment on previous rulemaking efforts regarding winter use of the Parks since 2000, including 2001, 2002, 2003, 2004, and 2007. Those rulemaking efforts addressed many of the same issues as are addressed in this rulemaking, and no substantially new issues are being raised.

(2) The NPS has in good faith since at least March 2007 publicly stated that the 2008–2009 winter season for the Parks would commence on December 15, 2008, and the public and businesses have made decisions based on the widespread public knowledge of this opening date.

(3) Many persons planning to visit the Parks have already made travel plans in anticipation of the Parks being open for snowmobile and snowcoach use, such as reserving time off from work, booking airfares and hotel accommodations, making reservations for snowmobile or snowcoach tours, and the like. The Christmas-New Year period is the most heavily visited time of the winter season. If the Parks do not open as scheduled on December 15, it would create unnecessary hardship for visitors who have already planned trips, and would likely result in economic losses

for some visitors if reservations had to be cancelled. Significant revenue loss for businesses in and around the Parks would also occur. Many businesses in the gateway communities surrounding the Parks, and the people who rely upon them for their livelihoods, are highly dependent upon the Parks being open for the entire duration of the 90-day season.

(4) Snowmobile and snowcoach operators have made business decisions and investments for the winter season premised on an opening date of December 15, 2008. Such actions include purchasing new snowmobiles and snowcoaches for their fleets, making offers of employment, preparing advertising and other materials, and purchasing snowmobile accessories such as suits, helmets, boots, mittens, etc. A late opening would shorten an already-brief winter season, thereby depriving these businesses and others that depend on the winter season (such as hotels, restaurants, service stations, and other hospitality-oriented businesses) of revenue that is important to their livelihoods.

Drafting Information: The primary authors of this regulation are Gary Pollock, Management Assistant, Grand Teton National Park, and John Sacklin, Management Assistant, Yellowstone National Park.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods.

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Yellowstone National Park, Winter Use Proposed Rule, P.O. Box 168, Yellowstone NP, WY 82190.
- *Hand Deliver to:* Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, Wyoming.

All comments must be received by midnight of the close of the comment period.

As noted previously, an EA is also available for public comment. Those wishing to comment on both this proposed rule and the EA should submit separate comments for each. Comments regarding the EA may be submitted online via the NPS' Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/*, or they may be addressed to: Winter Use Plans EA, P.O. Box 168, Yellowstone National Park, WY 82190. Additional information about the EA is available online at: *http://www.nps.gov/yell/planyourvisit/winteruse.htm*.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Amend § 7.13 by revising paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What is the scope of this regulation?* The regulations contained in paragraphs (l)(2) through (l)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (l)(2) through (l)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* The definitions in this paragraph (l)(2) also apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(i) Commercial guide means a guide who operates as a snowmobile or snowcoach guide for a fee or compensation and is authorized to operate in the park under a concession contract. In this section, ''guide'' also means ''commercial guide.''

(ii) Historic snowcoach means a Bombardier snowcoach manufactured in 1983 or earlier. Any other snowcoach is considered a non-historic snowcoach.

(iii) Oversnow route means that portion of the unplowed roadway located between the road shoulders and designated by snow poles or other poles, ropes, fencing, or signs erected to regulate oversnow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. The only motorized vehicles permitted on oversnow routes are oversnow vehicles.

(iv) Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and has been authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach must comply with all requirements applicable to snowmobiles.

(v) Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1,000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, and having a capacity of at least 8 passengers. A snowcoach has a maximum size of 102 inches wide, plus tracks (not to exceed 110 inches overall); a maximum length of 35 feet; and a Gross Vehicle Weight Rating (GVWR) not exceeding 25,000 pounds.

(vi) Snowmobile means a self-propelled vehicle intended for travel on snow, with a curb weight of not more than 1,000 pounds (450 kg), driven by a track or tracks in contact with the snow, and which may be steered by a ski or skis in contact with the snow.

(vii) Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(3) *May I operate a snowmobile in Yellowstone National Park?* (i) You may operate a snowmobile in Yellowstone National Park in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and must provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(ii) The authority to operate a snowmobile in Yellowstone National Park established in paragraph (l)(3)(i) of this section is in effect only through the winter season of 2010–2011.

(4) *May I operate a snowcoach in Yellowstone National Park?* (i) Snowcoaches may only be operated in Yellowstone National Park under a concessions contract. Snowcoach operation is subject to the conditions

stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as listed in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emissions-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, aftermarket parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (l)(4)(ii) through (l)(4)(iv) of this section.

(vi) The authority to operate a snowcoach in Yellowstone National Park established in paragraph (l)(4)(i) of this section is in effect only through the winter season of 2010–2011.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured emissions levels (official emission results with no deterioration factors applied) to comply with the emission limits specified in paragraph (l)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have been shown to the Superintendent to have emissions no greater than the limits specified in paragraph (l)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified.

(iv) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(v) These air and sound emissions requirements do not apply to snowmobiles being operated on the Cave Falls Road in Yellowstone.

(7) *Where may I operate my snowmobile in Yellowstone National Park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use only through the winter of 2010–2011:

(A) The Grand Loop Road from its junction with Upper Terrace Drive to Norris Junction.

(B) Norris Junction to Canyon Junction.

(C) The Grand Loop Road from Norris Junction to Madison Junction.

(D) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(E) The Grand Loop Road from Madison Junction to West Thumb.

(F) The South Entrance Road from the South Entrance to West Thumb.

(G) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(H) The East Entrance Road from Fishing Bridge Junction to the East Entrance.

(I) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(J) The South Canyon Rim Drive.

(K) Lake Butte Road.

(L) In the developed areas of Madison Junction, Old Faithful, Grant Village, West Thumb, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(M) Firehole Canyon Drive, between noon and 9 p.m. each day.

(N) North Canyon Rim Drive, between noon and 9 p.m. each day.

(O) Riverside Drive, between noon and 9 p.m. each day.

(P) Cave Falls Road.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, avalanche conditions, and other factors. Notice of such opening or closing will be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may be operated on the routes designated for snowmobile use in paragraphs (l)(7)(i)(A) through (l)(7)(i)(O) of this section. The restricted hours of snowmobile use described in paragraphs (l)(7)(i)(M) through (l)(7)(i)(O) do not apply to snowcoaches. Snowcoaches may also be operated on the following additional oversnow routes only through the winter of 2010–2011:

(A) Fountain Flat Road.

(B) The Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(C) For rubber-tracked snowcoaches only, the Grand Loop Road from Upper Terrace Drive to the junction of the Grand Loop Road and North Entrance Road, and within the Mammoth Hot Springs developed area.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one of more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (l)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in Yellowstone and what other guiding requirements apply?* (i) All recreational

snowmobile operators must be accompanied by a commercial guide.

(ii) Snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(iv) The guiding requirements described in this paragraph (l)(9) do not apply to snowmobiles being operated on the Cave Falls Road.

(10) *Are there limits established for the number of snowmobiles and snowcoaches permitted to operate in the park each day?* The number of snowmobiles and snowcoaches allowed to operate in the park each day is limited to a certain number per entrance or location. The limits are listed in the following table:

TABLE 1 TO § 7.13(L)—DAILY SNOWMOBILE AND SNOWCOACH LIMITS

Park entrance/location	Commercially guided snowmobiles	Commercially guided snowcoaches
(i) North Entrance *	12	13
(ii) West Entrance	160	34
(iii) South Entrance	114	13
(iv) East Entrance	20	2
(v) Old Faithful *	12	16
(vi) Cave Falls	** 50	0

* Commercially guided snowmobile tours originating at the North Entrance and Old Faithful are currently provided solely by Xanterra Parks and Resorts. Because this concessioner is the sole provider at both of these areas, this regulation allows the daily entry limits between the North Entrance and Old Faithful to be adjusted as necessary, so long as the total number of snowmobiles between the two entrances does not exceed 24. For example, the concessioner could operate 6 snowmobiles at Old Faithful and 18 at the North Entrance if visitor demand warranted it. This will allow the concessioner to respond to changing visitor demand for commercially guided snowmobile tours, thus enhancing visitor service in Yellowstone.

** These snowmobiles operate on an approximately 1-mile segment of road within the park where the use is incidental to other snowmobiling activities in the Targhee National Forest. These snowmobiles do not need to be guided or to meet NPS air and sound emissions requirements.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle for more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the driver's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds, or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from a state or province in the United States or Canada, respectively.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (l)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (1)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in Yellowstone is subject to §§ 2.18(a) and (c), but not subject to §§ 2.18 (b), (d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (l)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the park?*

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(iii) Dog sledding and ski-joring are prohibited. Bicycles are not allowed on oversnow routes in Yellowstone.

(16) *May I operate a snowplane in Yellowstone National Park?* The operation of a snowplane in Yellowstone is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(16) of this section is prohibited. Each such occurrence of non-compliance with these regulations is a separate violation.

* * * * *

3. Amend § 7.21 by revising paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr. Memorial Parkway.

(a)(1) *What is the scope of this section?* The regulations contained in paragraphs (a)(2) through (a)(17) of this section apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (a)(2) through (a)(17) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All of the terms in § 7.13(l)(2) of this part apply to this section. This paragraph also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and will provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in the Parkway?* (i) Snowcoaches may only be operated in the Parkway under a concessions contract. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(ii) All non-historic snowcoaches must meet NPS air emissions requirements, which mean the applicable EPA emissions standards for the vehicle that were in effect at the time it was manufactured.

(iii) All critical emission-related exhaust components (as defined in 40 CFR 86.004–25(b)(3)(iii) through (v)) must be functioning properly. Such critical emission-related components may only be replaced with the original equipment manufacturer (OEM) component, where possible. Where OEM parts are not available, after-market parts may be used if they are certified not to worsen emission and sound characteristics.

(iv) Modifying or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(v) Individual snowcoaches may be subject to periodic inspections to determine compliance with the requirements of paragraphs (a)(4)(ii) through (a)(4)(iv) of this section.

(5) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the Parkway. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the Parkway.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in the Parkway?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (a)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have been shown to have air emissions no greater than the restrictions identified in paragraph (a)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the Parkway for a period not exceeding 6 years from the date upon which first certified.

(iv) These air and sound emissions requirements do not apply to snowmobiles being operated on the Grassy Lake Road. On all other oversnow routes within the Parkway, snowmobiles must meet these air and sound emissions requirements.

(v) The Superintendent may prohibit entry into the Parkway of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the Parkway?* (i) You may operate your snowmobile only upon designated oversnow routes established within the Parkway in accordance with § 2.18(c) of this chapter. The following oversnow routes are so designated for snowmobile use:

(A) Along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway.

(B) Flagg Ranch developed area.

(C) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(ii) The Superintendent may open or close these routes, or portions thereof, for snowmobile travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(7) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraph (a)(7)(i)(A) and (B) of this section. No other routes are open to

snowcoach use, except as provided in paragraph (a)(8)(ii) of this section.

(ii) The Superintendent may open or close these oversnow routes, or portions thereof, or designate new routes for snowcoach travel after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (a)(8) also applies to non-administrative snowcoach use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(9) *Must I travel with a commercial guide while snowmobiling in the Parkway, and what other guiding requirements apply?* (i) All recreational snowmobile operators using the oversnow route along U.S. Highway 89/191/287 from Flagg Ranch to the northern boundary of the Parkway must be accompanied by a commercial guide. A guide is not required in other portions of the Parkway.

(ii) Guided snowmobile parties must travel in a group of no more than 11 snowmobiles, including that of the guide.

(iii) Guided snowmobile parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(10) *Are there limits established for the numbers of snowmobiles and snowcoaches permitted to operate in the Parkway each day?* The number of snowmobiles and snowcoaches allowed to operate in the Parkway each day is limited to a certain number per road segment. The limits are listed in the following table:

TABLE 1 TO § 7.21(A)—DAILY SNOWMOBILE AND SNOWCOACH ENTRY LIMITS

Park entrance/road segment	Snowmobiles	Commercial snowcoaches
(i) Grassy Lake Road (Flagg-Ashton Road)	25	0
(ii) Flagg Ranch to Yellowstone South Entrance *	114	13

* Commercially guided; the numbers of snowmobiles and snowcoaches allocated to this road segment may be adjusted depending on the results of analysis for concessions contracts, and will be the same as indicated in Table 1 to § 7.13(l) of this part.

(11) *When may I operate my snowmobile or snowcoach?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours will be made on an annual basis and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(12) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) Towing persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (a)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach driver and the alcohol concentration in the operator's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (a)(13) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(14) *Do other NPS regulations apply to the use of oversnow vehicles?* (i) The use of oversnow vehicles in the Parkway is subject to §§ 2.18(a), (b), and (c), but not to §§ 2.18(d), (e), and 2.19(b) of this chapter.

(ii) This paragraph (a)(14) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(15) *Are there any forms of non-motorized oversnow transportation allowed in the Parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the Parkway as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the Parkway in order to protect

visitors, employees, or park resources. Notice will be made in accordance with § 1.7(a) of this chapter.

(16) *May I operate a snowplane in the Parkway?* The operation of a snowplane in the Parkway is prohibited.

(17) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions, or requirements of paragraphs (a)(1) through (a)(16) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

4. Amend § 7.22, by revising paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What is the scope of this section?* The regulations contained in paragraphs (g)(2) through (g)(20) of this section are intended to apply to the use of snowcoaches and recreational snowmobiles. Except where indicated, paragraphs (g)(2) through (g)(20) do not apply to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(2) *What terms do I need to know?* All the terms in § 7.13(l)(2) of this part apply to this section. This paragraph (g)(2) also applies to non-administrative oversnow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(3) *May I operate a snowmobile in Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits, operating hours and dates, equipment, and operating conditions established under this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter or in the **Federal Register**.

(4) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park except as authorized by the Superintendent.

(5) *Must I operate a certain model of snowmobile in the park?* Except as provided for in paragraph (g)(6)(iv), only commercially available snowmobiles that meet NPS air and sound emissions requirements as set forth in this section may be operated in the park. The Superintendent will approve snowmobile makes, models, and years of manufacture that meet those requirements. Any snowmobile model not approved by the Superintendent may not be operated in the park.

(6) *How will the Superintendent approve snowmobile makes, models, and years of manufacture for use in Grand Teton National Park?* (i) Beginning with the 2005 model year, all snowmobiles must be certified under 40 CFR Part 1051, to a Family Emission Limit no greater than 15 g/kW-hr for hydrocarbons and to a Family Emission Limit no greater than 120 g/kW-hr for carbon monoxide.

(A) 2004 model year snowmobiles may use measured air emissions levels (official emission results with no deterioration factors applied) to comply with the air emission limits specified in paragraph (g)(6)(i) of this section.

(B) Snowmobiles manufactured before the 2004 model year may be operated only if they have shown to have air emissions no greater than the requirements identified in paragraph (g)(6)(i) of this section.

(C) The snowmobile test procedures specified by EPA (40 CFR Parts 1051 and 1065) must be used to measure air emissions from model year 2004 and later snowmobiles. Equivalent procedures may be used for earlier model years.

(ii) For sound emissions, snowmobiles must operate at or below 73 dBA as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985). Snowmobiles may be tested at any barometric pressure equal to or above 23.4 inches Hg uncorrected. The Superintendent may revise these testing procedures based on new information and/or updates to the SAE J192 testing procedures.

(iii) Snowmobiles meeting the requirements for air and sound emissions may be operated in the park for a period not exceeding 6 years from the date upon which first certified, except that snowmobiles being operated on Jackson Lake may continue to be operated up to 10 years, provided that these snowmobiles' mileage does not exceed 6,000 miles.

(iv) Snowmobiles will be exempt from these air and sound emissions requirements while in use to access lands authorized by paragraphs (g)(16) and (g)(18) of this section.

(v) The Superintendent may prohibit entry into the park of any snowmobile that has been modified in a manner that may adversely affect air or sound emissions.

(7) *Where may I operate my snowmobile in the park?* (i) You may operate your snowmobile only upon designated oversnow routes established within the park in accordance with § 2.18(c) of this chapter. The following oversnow route is so designated for snowmobile use:

(A) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson Lake for ice fishing must be licensed or otherwise permitted to fish in Wyoming and possess the proper fishing gear. Snowmobiles may only be used to travel to and from fishing locations on the lake.

(ii) The Superintendent may open or close this route, or portions thereof, for snowmobile travel, and may establish separate zones for motorized and non-motorized uses on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such opening or closing by one or more of the methods listed in § 1.7(a) of this chapter.

(iii) This paragraph (g)(7) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(iv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(8) *Must I travel with a commercial guide while snowmobiling in Grand Teton National Park?* You are not required to use a guide while snowmobiling in Grand Teton National Park.

(9) *Are there limits established for the number of snowmobiles permitted to operate in the park each day?* (i) A total of 25 snowmobiles per day are allowed to operate on the route designated in paragraph (g)(7)(i)(A).

(ii) The Superintendent may adjust the number of snowmobiles described in paragraph (g)(9)(i) upwards or downwards, not to exceed a limit of 40 snowmobiles per day, based on the results of sound monitoring data, and after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and other factors. The Superintendent will provide notice of such changes by one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile?* The Superintendent will determine operating hours and dates. Except for emergency situations, any changes to operating hours or dates will be made on an annual basis, and the public will be notified of those changes through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Driving an oversnow vehicle while the operator's motor vehicle license or privilege is suspended or revoked.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Driving an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following are required:

(A) All oversnow vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be used where available and accessible. Oversnow vehicles may not be stopped in a hazardous location or where the view might be obscured, or operated so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle drivers must possess a valid motor vehicle driver's license. A learner's permit does not satisfy this requirement. The license must be carried by the driver at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid registration from the United States or Canada.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The Superintendent will notify the public of any changes through one or more methods listed in § 1.7(a) of this chapter.

(iv) This paragraph (g)(11) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is under 21 years of age and the alcohol concentration in the driver's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the driver is a snowmobile guide or a snowcoach operator and the alcohol concentration in the driver's blood or breath is 0.04 grams or more of alcohol per 100 milliliters of blood or 0.04 grams or more of alcohol per 210 liters of breath.

(iii) This paragraph (g)(12) also applies to non-administrative over-snow vehicle use by NPS, contractor, or concessioner employees, or other non-recreational users authorized by the Superintendent.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The use of oversnow vehicles in Grand Teton is subject to §§ 2.18(a), (b), and (c), but not subject to § 2.18(d) and (e) and § 2.19(b) of this chapter.

(14) *Are there any forms of non-motorized oversnow transportation allowed in the park?*

(i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking is permitted unless otherwise restricted under this section or other NPS regulations.

(ii) The Superintendent may designate areas of the park as closed, reopen such areas, or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees, or park resources.

(iii) Dog sledding and ski-joring are prohibited.

(15) *May I operate a snowplane in the park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(16) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on the designated routes through the park identified in paragraphs (g)(i)–(iv) of this section. Requirements established in this section related to air and sound emissions, daily entry limits, snowmobile operator age, guiding, and licensing do not apply on these oversnow routes. Only the following routes are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(iii) The Continental Divide Snowmobile Trail (CDST) along U.S. 26/287 from the east park boundary to a point approximately 2 miles east of Moran Junction. If necessary for the proper administration of visitor use and resource protection, the Superintendent may extend this designated route to the Moran Entrance Station.

(iv) The Superintendent may designate additional routes if necessary to provide access to other adjacent public lands.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* You may only use those routes designated in paragraph (g)(16) of this section to gain direct access to public lands adjacent to the park boundary.

(18) *May I continue to access private property within or adjacent to the park via snowmobile?* The Superintendent may establish reasonable and direct snowmobile access routes to the inholding or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to private properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89/191 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the ''Clark Property.''

(iii) From the Moose-Wilson Road to the land commonly referred to as the ''Barker Property.''

(iv) From the Moose-Wilson Road to the property commonly referred to as the ''Halpin Property.''

(v) From Highway 26/89/191 to those lands commonly referred to as the ''Meadows,'' the ''Circle EW Ranch,'' the ''Moulton Property,'' the ''Levinson Property,'' and the ''West Property.''

(vi) From Cunningham Cabin pullout on U.S. 26/89/191 near Triangle X to the piece of land commonly referred to as the ''Lost Creek Ranch.''

(vii) The Superintendent may designate additional routes if necessary to provide reasonable access to inholdings or adjacent private property.

(viii) Maps detailing designated routes will be available from Park Headquarters.

(19) *For what purpose may I use the routes designated in paragraph (g)(18) of this section?* The routes designated in paragraph (g)(18) of this section are only to access private property within or directly adjacent to the park boundary.

Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(20) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(19) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–26447 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–CT–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R04–OAR–2008–0681; FRL–8737–2]

Outer Continental Shelf Air Regulations Consistency Update for North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule-consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (''CAA'' or ''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of North Carolina will be the designated COA. The effect of approving the OCS requirements for the State of North Carolina is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations (CFR) and is listed in the appendix to the OCS air regulations. This proposed action is an annual update of North Carolina's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources.

DATES: Comments must be received on or before December 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0681, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lakeman.sean@epa.gov*.
3. *Fax:* (404) 562–9019.
4. *Mail:* ''(EPA–R04–OAR–2008–0681),'' Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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–R04–OAR–2008–0681).'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *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*, 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. EPA's Evaluation
III. Proposed Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of

[1] For further information see the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792).

a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12 of the OCS rule, ''consistency reviews will occur at least annually. In addition, in accordance with paragraphs (c) and (d) of this section, consistency reviews will occur upon receipt of an NOI (notice of intent) and when a State or local agency submits a rule to EPA to be considered for incorporation by reference in this part 55.'' This proposed action is an annual update of North Carolina's OCS Air Regulations, which are incorporated by reference into 40 CFR part 55, Appendix A.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This process is distinct from the State Implementation Plan (SIP) process and incorporation of a rule into part 55 as part of the OCS consistency update process does not ensure such a rule would be appropriate for inclusion into the SIP. EPA's review of North Carolina's rules for OCS consistency update purposes is described below.

II. EPA's Evaluation

In updating 40 CFR part 55, Appendix A, EPA reviewed North Carolina's rules for inclusion into part 55 to ensure that they are (1) rationally related to the attainment or maintenance of federal or state ambient air quality standards and part C of title I of the Act; (2) not designed expressly to prevent exploration and development of the OCS; and (3) applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

EPA is soliciting public comments on the proposal to update 40 CFR part 55, Appendix A to include recent changes to North Carolina's onshore rules that affect OCS sources. Any comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the EPA Region 4 Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

EPA is proposing an annual update of North Carolina's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources. The rules that EPA is proposing to incorporate are applicable provisions of Chapter 15A of the North Carolina Administrative Code, listed in detail at the end of this document.

IV. 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the CAA, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (ICR) No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 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; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as it does with onshore sources. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

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

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This document contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for state, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action would implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. The OCS rules already apply in the COA, and EPA has no evidence to suggest that applying them in the OCS would result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. As required by section 328 of the CAA, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

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 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. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from state and local officials.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule 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 and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

feasible alternatives considered by the Agency.

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

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

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

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 laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629 (February 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 lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the CAA, without the exercise of any policy discretion by EPA. As required by section 328 of the CAA, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today's regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

List of Subjects in 40 CFR Part 55

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

Dated: October 24, 2008.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

For the reasons stated in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 55—[AMENDED]

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

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

2. Section 55.14 is amended by revising paragraph (e)(17)(i)(A) to read as follows:

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

* * * * *

(e) * * *

(17) * * *

(i) * * *

(A) State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources, January 2, 2008.

* * * * *

3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''North Carolina'' to read as follows:

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

* * * * *

North Carolina

(a) State requirements.

(1) The following requirements are contained in *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources*, January 2, 2008: The following sections of subchapter 2D, 2H and 2Q.

15A NCAC SUBCHAPTER 2D—AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0100—DEFINITIONS AND REFERENCES

2D.0101 Definitions (Effective 12/01/2005)
2D.0104 Incorporation by reference (Effective 07/01/1998)

SECTION .0200—AIR POLLUTION SOURCES

2D.0201 Classification of air pollution sources (Effective 07/01/1984)
2D.0202 Registration of air pollution sources (Effective 07/01/1998)

SECTION .0300—AIR POLLUTION EMERGENCIES

2D.0301 Purpose (Effective 02/01/1976)
2D.0302 Episode criteria (Effective 07/01/1998)
2D.0303 Emission reduction plans (Effective 07/01/1984)

2D.0304 Preplanned abatement program (Effective 07/01/1998)
2D.0305 Emission reduction plan: Alert Level (Effective 07/01/1984)
2D.0306 Emission reduction plan: Warning Level (Effective 07/01/1984)
2D.0307 Emission reduction plan: Emergency Level (Effective 07/01/1984)

SECTION .0400—AMBIENT AIR QUALITY STANDARDS

2D.0401 Purpose (Effective 12/01/1992)
2D.0402 Sulfur oxides (Effective 07/01/1984)
2D.0403 Total suspended particulates (Effective 07/01/1988)
2D.0404 Carbon monoxide (Effective 10/01/1989)
2D.0405 Ozone (Effective 04/01/1999)
2D.0407 Nitrogen dioxide (Effective 10/01/1989)
2D.0408 Lead (Effective 07/01/1984)
2D.0409 PM10 particulate matter (Effective 04/01/1999)
2D.0410 PM2.5 particulate matter (Effective 04/01/1999)

SECTION .0500—EMISSION CONTROL STANDARDS

2D.0501 Compliance with emission control standards (Effective 06/01/2008)
2D.0502 Purpose (Effective 06/01/1981)
2D.0503 Particulates from fuel burning indirect heat exchangers (Effective 04/01/1999)
2D.0504 Particulates from wood burning indirect heat exchangers (Effective 08/01/2002)
2D.0506 Particulates from hot mix asphalt plants (Effective 08/01/2004)
2D.0507 Particulates from chemical fertilizer manufacturing plants (Effective 04/01/2003)
2D.0508 Particulates from pulp and paper mills (Effective 07/10/1998)
2D.0509 Particulates from MICA or FELDSPAR processing plants (Effective 04/01/2003)
2D.0510 Particulates from sand, gravel, or crushed stone operations (Effective 07/01/1998)
2D.0511 Particulates from lightweight aggregate processes (Effective 07/01/1998)
2D.0512 Particulates from wood products finishing plants (Effective 01/01/1985)
2D.0513 Particulates from portland cement plants (Effective 07/01/1998)
2D.0514 Particulates from ferrous jobbing foundries (Effective 07/01/1998)
2D.0515 Particulates from miscellaneous industrial processes (Effective 04/01/2003)
2D.0516 Sulfur dioxide emissions from combustion sources (Effective 07/01/2007)
2D.0517 Emissions from plants producing sulfuric acid (Effective 01/01/1985)
2D.0519 Control of nitrogen dioxide and nitrogen oxides emissions (Effective 07/01/2007)
2D.0521 Control of visible emissions (Effective 07/01/2007)
2D.0524 New Source Performance Standards (Effective 07/01/2007)
2D.0527 Emissions from spodumene ore roasting (Effective 01/01/1985)
2D.0528 Total reduced sulfur from kraft pulp mills (Effective 07/01/1988)
2D.0529 Fluoride emissions from primary aluminum reduction plants (Effective 06/01/2008)
2D.0530 Prevention of significant deterioration (Effective 05/01/2008)
2D.0531 Sources in nonattainment areas (Effective 05/01/2008)
2D.0532 Sources contributing to an ambient violation (Effective (07/01/1994)
2D.0533 Stack height (Effective 07/01/1994)
2D.0534 Fluoride emissions from phosphate fertilizer industry (Effective 11/01/1982)
2D.0535 Excess emissions reporting and malfunctions (Effective 06/01/2008)
2D.0536 Particulate emissions from electric utility boilers (Effective 06/10/2008)
2D.0537 Control of mercury emissions (Effective 07/01/1996)
2D.0538 Control of ethylene oxide emissions (Effective 06/01/2004)
2D.0539 Odor control of feed ingredient manufacturing plants (Effective 04/01/2001)
2D.0540 Particulates from fugitive dust emission sources (Effective 08/01/2007)
2D.0541 Control of emissions from abrasive blasting (Effective 07/01/2000)
2D.0542 Control of particulate emissions from cotton ginning operations (Effective 06/01/2008)
2D.0543 Best Available Retrofit Technology (Effective 05/01/2007)

SECTION .0600—MONITORING: RECORDKEEPING: REPORTING

2D.0601 Purpose and scope (Effective 04/01/1999)
2D.0602 Definitions (Effective 04/01/1999)
2D.0604 Exceptions to monitoring and reporting requirements (Effective 04/01/1999)
2D.0605 General recordkeeping and reporting requirements (Effective 01/01/2007)
2D.0606 Sources covered by appendix P of 40 CFR part 51 (Effective 06/01/2008)
2D.0607 Large wood and wood-fossil fuel combination units (Effective 07/01/1999)
2D.0608 Other large coal or residual oil burners (Effective 06/01/2008)
2D.0610 Federal monitoring requirements (Effective 04/01/1999)
2D.0611 Monitoring emissions from other sources (Effective 04/01/1999)
2D.0612 Alternative monitoring and reporting procedures (Effective 04/01/1999)
2D.0613 Quality assurance program (Effective 04/01/1999)
2D.0614 Compliance assurance monitoring (Effective 04/01/1999)
2D.0615 Delegation (Effective 04/01/1999)

SECTION .0800—COMPLEX SOURCES

2D.0801 Purpose and scope (Effective 02/01/2005)
2D.0802 Definitions (07/01/1994)
2D.0804 Airport facilities (Effective 07/01/1996)
2D.0805 Parking facilities (Effective 07/01/1996)
2D.0806 Ambient monitoring and modeling analysis (Effective 07/01/1994)

SECTION .0900—VOLATILE ORGANIC COMPOUNDS

2D.0901 Definitions (Effective 06/01/2008)
2D.0902 Applicability (Effective 07/01/2007)
2D.0903 Recordkeeping: reporting: monitoring (Effective 04/01/1999)
2D.0906 Circumvention (Effective 01/01/1985)
2D.0909 Compliance schedules for sources in nonattainment areas (Effective 07/01/2007)
2D.0912 General provisions on test methods and procedures (Effective 06/01/2008)
2D.0917 Automobile and light-duty truck manufacturing (Effective 07/01/1996)
2D.0918 Can coating (Effective 07/01/1996)
2D.0919 Coil coating (Effective 07/01/1996)
2D.0920 Paper coating (Effective 07/01/1996)
2D.0921 Fabric and vinyl coating (Effective 07/01/1996)
2D.0922 Metal furniture coating (Effective 07/01/1996)
2D.0923 Surface coating of large appliances (Effective 07/01/1996)
2D.0924 Magnet wire coating (Effective 07/01/1996)
2D.0925 Petroleum liquid storage in fixed roof tanks (03/01/1991)
2D.0926 Bulk gasoline plants (Effective 07/01/1996)
2D.0927 Bulk gasoline terminals (Effective 01/01/2007)
2D.0928 Gasoline service stations stage I (Effective 07/01/1996)
2D.0930 Solvent metal cleaning (Effective 03/01/1991)
2D.0931 Cutback asphalt (Effective 12/01/1989)
2D.0932 Gasoline truck tanks and vapor collection systems (Effective 08/01/2008)
2D.0933 Petroleum liquid storage in external floating roof tanks (Effective 06/01/2004)
2D.0934 Coating of miscellaneous metal parts and products (Effective 07/01/1996)
2D.0935 Factory surface coating of flat wood paneling (Effective 07/01/1996)
2D.0936 Graphic arts (Effective 12/01/1993)
2D.0937 Manufacture of pneumatic rubber tires (Effective 07/01/1996)
2D.0943 Synthetic organic chemical and polymer manufacturing (Effective 06/01/2008)
2D.0944 Manufacture of polyethylene: polypropylene and polystyrene (Effective 05/01/1985)
2D.0945 Petroleum dry cleaning (Effective 06/01/2008)
2D.0947 Manufacture of synthesized pharmaceutical products (Effective 07/01/1994)
2D.0948 VOC emissions from transfer operations (Effective 07/01/2000)
2D.0949 Storage of miscellaneous volatile organic compounds (Effective 07/01/2000)
2D.0951 Miscellaneous volatile organic compound emissions (Effective 07/01/2000)
2D.0952 Petition for alternative controls for RACT (Effective 04/01/2003)
2D.0953 Vapor return piping for stage II vapor recovery (Effective 07/01/1998)

2D.0954 Stage II vapor recovery (Effective 04/01/2003)
2D.0955 Thread bonding manufacturing (Effective 05/01/1995)
2D.0956 Glass christmas ornament manufacturing (Effective 05/01/1995)
2D.0957 Commercial bakeries (Effective 05/01/1995)
2D.0958 Work practices for sources of volatile organic compounds (Effective 07/01/2000)
2D.0959 Petition for superior alternative controls (Effective 04/01/2003)
2D.0960 Certification of leak tightness tester (Effective 07/01/2007)

SECTION .1100—CONTROL OF TOXIC AIR POLLUTANTS

2D.1101 Purpose (Effective 05/01/1990)
2D.1102 Applicability (Effective 07/01/1998)
2D.1103 Definition (Effective 04/01/2001)
2D.1104 Toxic air pollutant guidelines (Effective 06/01/2008)
2D.1105 Facility reporting, recordkeeping (Effective 04/01/1999)
2D.1106 Determination of ambient air concentration (Effective 07/01/1998)
2D.1107 Multiple facilities (Effective 07/01/1998)
2D.1108 Multiple pollutants (Effective 05/01/1990)
2D.1109 112(j) case-by-case maximum achievable control technology (Effective 02/01/2004)
2D.1110 National Emission Standards for Hazardous Air Pollutants (Effective 06/01/2008)
2D.1111 Maximum Achievable Control Technology (Effective 01/01/2007)
2D.1112 112(g) case-by-case maximum achievable control technology (Effective 07/01/1998)

SECTION .1200—CONTROL OF EMISSIONS FROM INCINERATORS

2D.1201 Purpose and scope (Effective 07/01/2007)
2D.1202 Definitions (Effective 07/01/2007)
2D.1203 Hazardous waste incinerators (Effective 06/01/2008)
2D.1204 Sewage sludge and sludge incinerators (Effective 06/01/2008)
2D.1205 Municipal waste combustors (Effective 04/01/2004)
2D.1206 Hospital, medical, and infectious waste incinerators (Effective 06/01/2008)
2D.1207 Conical incinerators (Effective 07/01/2000)
2D.1208 Other incinerators (Effective 08/01/2008)
2D.1210 Commercial and industrial solid waste incineration units (Effective 06/01/2008)
2D.1211 Other solid waste incineration units (Effective 07/01/2007)

SECTION .1300—OXYGENATED GASOLINE STANDARD

2D.1301 Purpose (Effective 09/01/1996)
2D.1302 Applicability (Effective 09/01/1996)
2D.1303 Definitions (Effective 09/01/1992)
2D.1304 Oxygen content standard (Effective 09/01/1996)
2D.1305 Measurement and enforcement (Effective 07/01/1998)

SECTION .1400—NITROGEN OXIDES

2D.1401 Definitions (Effective 07/18/2002)
2D.1402 Applicability (Effective 06/01/2008)
2D.1403 Compliance schedules (Effective 07/01/2007)
2D.1404 Recordkeeping: Reporting: Monitoring: (Effective 12/01/2005)
2D.1405 Circumvention (Effective 04/01/1995)
2D.1407 Boilers and indirect-fired process heaters (Effective 06/01/2008)
2D.1408 Stationary combustion turbines (Effective 06/01/2008)
2D.1409 Stationary internal combustion engines (Effective 06/01/2008)
2D.1410 Emissions averaging (Effective 07/18/2002)
2D.1411 Seasonal fuel switching (Effective 06/01/2008)
2D.1412 Petition for alternative limitations (Effective 06/01/2008)
2D.1413 Sources not otherwise listed in this section (Effective 07/18/2002)
2D.1414 Tune-up requirements (Effective 07/18/2002)
2D.1415 Test methods and procedures (Effective 07/18/2002)
2D.1416 Emission allocations for utility companies (Effective 06/01/2004)
2D.1417 Emission allocations for large combustion sources (Effective 06/01/2004)
2D.1418 New electric generating units, large boilers, and large I/C engines (Effective 06/01/2004)
2D.1419 Nitrogen oxide budget trading program (Effective 06/01/2004)
2D.1420 Periodic review and reallocations (Effective 07/18/2002)
2D.1421 Allocations for new growth of major point sources (Effective 07/18/2002)
2D.1422 Compliance supplement pool credits (Effective 06/01/2004)
2D.1423 Large internal combustion engines (Effective 07/18/2002)

SECTION .1600—GENERAL CONFORMITY

2D.1601 Purpose, scope and applicability (Effective 04/01/1999)
2D.1602 Definitions (Effective 04/01/1995)
2D.1603 General conformity determination (Effective 07/01/1998)

SECTION .1900—OPEN BURNING

2D.1901 Open burning: Purpose: Scope (Effective 07/01/2007)
2D.1902 Definitions (Effective 07/01/2007)
2D.1903 Open burning without an air quality permit (Effective 07/01/2007)
2D.1904 Air curtain burners (Effective 07/01/2007)
2D.1905 Regional office locations (Effective 12/01/2005)
2D.1906 Delegation to county governments (Effective 12/01/2005)
2D.1907 Multiple violations arising from a single episode (Effective 07/01/2007)

SECTION .2000—TRANSPORTATION CONFORMITY

2D.2001 Purpose, scope and applicability (Effective 12/01/2005)
2D.2002 Definitions (Effective 04/01/1999)
2D.2003 Transportation conformity determination (Effective 04/01/1999)
2D.2004 Determining transportation-related emissions (Effective 04/01/1999)
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2D.2102 Definitions (Effective 07/01/2000)
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2D.2304 Qualification of emission reduction credits (Effective 12/01/2005)
2D.2305 Creating and banking emission reduction credits (Effective 12/01/2005)
2D.2306 Duration of emission reduction credits (Effective 12/01/2005)
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2D.2403 Nitrogen oxide emissions (Effective 05/01/2008)
2D.2404 Sulfur dioxide (Effective 05/01/2008)
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2D.2406 Permitting (Effective 07/01/2006)
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2D.2408 Trading program and banking (Effective 07/01/2006)
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2D.2602 General provisions on test methods and procedures (Effective 07/01/2008)
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2Q.0102 Activities exempted from permit requirements (Effective 07/01/2007)
2Q.0103 Definitions (Effective 12/01/2005)
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2Q.0109 Compliance schedule for previously exempted activities (Effective 04/01/2001)
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2Q.0202 Definitions (Effective 04/01/2004)
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2Q.0303 Definitions (Effective 07/01/1994)
2Q.0304 Applications (Effective 12/01/2005)
2Q.0305 Application submittal content (Effective 12/01/2005)
2Q.0306 Permits requiring public participation (Effective 07/01/2007)
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2Q.0310 Permitting of numerous similar facilities (Effective 07/01/1994)
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2Q.0316 Administrative permit amendments (Effective 04/01/2001)
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2Q.0501 Purpose of section and requirement for a permit (Effective 07/01/1998)
2Q.0502 Applicability (Effective 07/01/2000)
2Q.0503 Definitions (Effective 01/01/2007)
2Q.0504 Option for obtaining construction and operation permit (Effective 07/01/1994)
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2Q.0510 Permitting of facilities at multiple temporary sites (Effective 07/01/1994)
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2Q.0522 Review by EPA and affected states (Effective 07/01/1994)
2Q.0523 Changes not requiring permit revisions (Effective 06/01/2008)
2Q.0524 Ownership change (Effective 07/01/1994)
2Q.0525 Application processing schedule (Effective 07/01/1998)
2Q.0526 112(j) case-by-case MACT procedures (Effective 02/01/2004)
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2Q.0601 Purpose of section and requirement for a permit (Effective 07/01/1994)
2Q.0602 Definitions (Effective 07/01/1994)
2Q.0603 Applications (Effective 02/01/2005)
2Q.0604 Public participation (Effective 07/01/1994)
2Q.0605 Final action on permit applications (Effective 02/01/2005)
2Q.0606 Termination, modification and revocation of permits (Effective 07/01/1994)
2Q.0607 Application processing schedule (Effective 07/01/1998)

SECTION .0700—TOXIC AIR POLLUTANT PROCEDURES

2Q.0701 Applicability (Effective 02/01/2005)
2Q.0702 Exemptions (Effective 04/01/2005)
2Q.0703 Definitions (Effective 04/01/2001)
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2Q.0705 Existing facilities and sic calls (Effective 07/01/1998)
2Q.0706 Modifications (Effective 12/01/2005)
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2Q.0709 Demonstrations (Effective 02/01/2005)
2Q.0710 Public notice and opportunity for public hearing (Effective 07/01/1998)
2Q.0711 Emission rates requiring a permit (Effective 06/01/2008)
2Q.0712 Calls by the director (Effective 07/01/1998)
2Q.0713 Pollutants with otherwise applicable federal standards or requirements (Effective 07/01/1998)

SECTION .0800—EXCLUSIONARY RULES

2Q.0801 Purpose and scope (Effective 04/01/1999)
2Q.0802 Gasoline service stations and dispensing facilities (Effective 08/01/1995)
2Q.0803 Coating, solvent cleaning, graphic arts operations (Effective 04/01/2001)
2Q.0804 Dry cleaning facilities (Effective 08/01/1995)
2Q.0805 Grain elevators (Effective 04/01/2001)
2Q.0806 Cotton gins (Effective 06/01/2004)
2Q.0807 Emergency generators (Effective 04/01/2001)
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2Q.0809 Concrete batch plants (Effective 06/01/2004)
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SECTION .0900—PERMIT EXEMPTIONS

2Q.0901 Purpose and scope (Effective 01/01/2005)
2Q.0902 Portable crushers (Effective 01/01/2005)
2Q.0903 Emergency generators (Effective 06/01/2008)

* * * * *

[FR Doc. E8–26360 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1016]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: Comments are to be submitted on or before February 3, 2009.

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

You may submit comments, identified by Docket No. FEMA–B–1016, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

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

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Archuleta County, CO, Colorado, and Incorporated Areas				
Stollsteimer Creek	150 feet east of CR 700 Extension	None	+6783	Unincorporated Areas of Archuleta County.
	South of Hawthorne Drive and Highway 160	None	+7023	

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

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

ADDRESSES

Unincorporated Areas of Archuleta County

Maps are available for inspection at 449 San Juan Street, Pagosa Springs, CO 81147.

Berrien County, Georgia, and Incorporated Areas				
Cat Creek/Tributary 2	Approximately 320 feet downstream of State Highway 37.	None	+175	Unincorporated Areas of Berrien County.
	Approximately 1,270 feet upstream of North Street	None	+183	

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

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

ADDRESSES

Unincorporated Areas of Berrien County

Maps are available for inspection at County Courthouse, Town Square, Nashville, GA 31639.

Colquitt County, Georgia, and Incorporated Areas				
Ochlockonee River	Approximately 3,380 feet downstream of Camilla Highway.	None	+256	Township of Riverside.
	Approximately 238 feet upstream of Camilla Highway	None	+258	

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

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

ADDRESSES

Township of Riverside

Maps are available for inspection at City Hall, 301 Riverside Drive, Moultrie, GA 31768.

Kankakee County, Illinois, and Incorporated Areas				
South Branch Rock Creek	Approximately 2,400 feet downstream of Sycamore Street (County Road 3000 East).	None	*665	Unincorporated Areas of Kankakee County, Village of Manteno.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Upstream side of South Locust Street	None	*665	

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

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

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

ADDRESSES

Village of Manteno

Maps are available for inspection at Manteno Village Hall, 269 North Main Street, Manteno, IL 60950.

Unincorporated Areas of Kankakee County

Maps are available for inspection at Kankakee County Administration Building, 189 East Court Street, Kankakee, IL 60901.

Marshall County, Illinois, and Incorporated Areas

Sandy Creek	From County Highway 14	None	+673	Unincorporated Areas of Marshall County, City of Wenona.
	To approximately 140 feet northwest of the intersection of Hickory Street and South 5th Street in the City of Wenona.	None	+686	

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

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

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

ADDRESSES

City of Wenona

Maps are available for inspection at 226 South Chestnut Street, P.O. Box 601, Wenona, IL 61377.

Unincorporated Areas of Marshall County

Maps are available for inspection at 122 North Prairie Street, P.O. Box 328, Lacon, IL 61540.

Elkhart County, Indiana, and Incorporated Areas

Cobus Creek	At County Road 6	None	+765	Unincorporated Areas of Elkhart County.
	Approximately 3,370 feet upstream of County Road 2	None	+789	
Haverstick Ditch/Darkwood Ditch.	Just upstream of confluence with Berlin Court Ditch	None	+835	Unincorporated Areas of Elkhart County.
	Approximately 3,550 feet upstream of County Road 7	None	+862	
Hoke Ditch	At confluence with Yellow Creek	None	+782	Unincorporated Areas of Elkhart County.
	At State Road 19	None	+797	
Horn Ditch	At confluence with Rock Run Creek	None	+799	Unincorporated Areas of Elkhart County, City of Goshen.
	At County Road 33	None	+825	
Little Elkhart River	Approximately 1,500 feet downstream of County Road 131.	+773	+774	Unincorporated Areas of Elkhart County.
	At the LaGrange County Boundary	None	+842	
Mather Ditch	Approximately 900 feet upstream of confluence with Little Elkhart River.	+815	+816	Unincorporated Areas of Elkhart County, Town of Middlebury.
	Approximately 350 feet upstream of County Road 43	None	+844	
Pine Creek	Approximately 120 feet downstream of State Road 15	+806	+807	Unincorporated Areas of Elkhart County.
	At County Road 35	None	+886	
Rock Run Creek	Approximately 200 feet upstream of confluence with Elkhart River.	+780	+779	Unincorporated Areas of Elkhart County, City of Goshen.
	At County Road 35	None	+846	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Werntz Ditch	At confluence with Baugo Creek	None	+810	Unincorporated Areas of Elkhart County, Town of Wakarusa.
	Approximately 900 feet upstream of Industrial Parkway.	None	+853	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Goshen
Maps are available for inspection at Deparment of Planning and Zoning, 204 East Jefferson Street, Suite 4, Goshen, IN 46528.

Town of Middlebury
Maps are available for inspection at Town Hall, 418 North Main Street, Middlebury, IN 46540.

Town of Wakarusa
Maps are available for inspection at Town Hall, 100 West Waterford Street, Wakarusa, IN 46573.

Unincorporated Areas of Elkhart County
Maps are available for inspection at Elkhart County Public Services Building, 4230 Elkhart Road, Goshen, IN 46526.

Cowley County, Kansas, and Incorporated Areas

Black Crook Creek	Approximately 0.38 mile upstream of Simpson Avenue.	None	+1154	City of Winfield, Unincorporated Areas of Cowley County.
	Approximately 0.16 mile upstream of 152nd Street	None	+1244	
Black Crook Creek Tributary 1.	Approximately 0.36 mile downstream of 101st Road	None	+1120	Unincorporated Areas of Cowley County.
	Approximately 0.91 mile upstream of 103rd Road	None	+1188	
Black Crook Creek Tributary 2.	Confluence with Black Crook Creek	None	+1132	City of Winfield, Unincorporated Areas of Cowley County.
	Approximately 350 feet upstream of State Route K360.	None	+1183	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Winfield
Maps are available for inspection at City Office, 200 East Ninth Avenue, Winfield, KS 67156.

Unincorporated Areas of Cowley County
Maps are available for inspection at County Office, 311 East Ninth Avenue, Winfield, KS 67156.

Neosho County, Kansas, and Incorporated Areas

Little Turkey Creek	Approximately 127 feet downstream of Katy Road	None	+925	Unincorporated Areas of Neosho County.
	Approximately 675 feet downstream of U.S. Highway 169.	None	+932	
Neosho River	Approximately 1.2 miles downstream of State Highway 39.	None	+917	Unincorporated Areas of Neosho County.
	Approximately 1.13 miles upstream of State Highway 39.	None	+920	
Puckets Run Creek	Approximately 120 feet upstream of East State Street	None	+896	Unincorporated Areas of Neosho County.
	At East Railroad Street	None	+897	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 75 feet downstream of Atchison, Topeka and Santa Fe Railroad.	None	+898	
	Approximately 350 feet downstream of Queen Road ..	None	+902	
Santa Fe Lake	Approximately 115 feet downstream of West 35 Street.	None	+944	Unincorporated Areas of Neosho County.
	At Atchison, Topeka and Santa Fe Railroad	None	+945	
Tolen Creek	Approximately 0.32 mile upstream of Pratt Road	None	+896	Unincorporated Areas of Neosho County.
	Approximately 1.95 miles upstream of Pratt Road	None	+910	
Tributary to Puckets Run Creek.	Intersection of Trib Street and Missouri-Kansas-Texas Railroad.	None	+895	Unincorporated Areas of Neosho County.
	Intersection of Trib Street and East Street	None	+899	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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

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

ADDRESSES

Unincorporated Areas of Neosho County

Maps are available for inspection at 100 South Main, Erie, KS 66733.

St. Clair County, Michigan, and Incorporated Areas

Beaubien Creek	At confluence with Lake St. Clair	+578	+579	Township of Clay, Township of Cottrellville, Township of Ira.
	Upstream side of Mayer Road	+578	+579	
Belle River	At confluence with St. Clair River	+580	+581	City of Marysville.
	Approximately 475 feet upstream of Broadway Street	+580	+581	
Belle River	Upstream side of Bordman Road	None	+699	Township of Riley.
	Approximately 550 feet upstream of Bordman Road	None	+701	
Black River	At confluence with St. Clair River	+582	+583	City of Port Huron.
	Upstream side of 7th Street	+582	+583	
Lake Huron	Entire shoreline of Lake Huron	None	+584	Township of Burtchville.
Lake St. Clair	Entire shoreline of Lake St. Clair	+578	+579	Township of Clay, Township of Ira.
Lester Bammel Drain	At confluence with St. Clair River	+579	+581	Township of Cottrellville.
	Approximately 175 feet downstream of Paradise Boulevard.	+580	+581	
Marine City Drain	At confluence with St. Clair River	+579	+580	Township of Clay, City of Algonac.
	At Algonac State Park	+579	+580	
Meldrum Creek	At confluence with Swan Creek	+578	+579	Township of Ira.
	Approximately 1,500 feet upstream of the confluence with Swan Creek.	+578	+579	
Middle Channel St. Clair River.	At confluence with Lake St. Clair	+578	+579	Township of Clay.
	At diversion with North Channel St. Clair River	+578	+579	
North Channel St. Clair River	At confluence with Lake St. Clair	+578	+579	Township of Clay, City of Algonac.
	At diversion with South Channel St. Clair River	+579	+580	
Pine River	At confluence with St. Clair River	+581	+582	City of St. Clair.
	Approximately 0.3 mile upstream of S Riverside Avenue.	+581	+582	
Robbins Drain	At confluence with St. Clair River	+579	+580	Township of Cottrellville.
	Approximately 500 feet downstream of Nautical Lane	+579	+580	
Robbins Drain Outlet	At confluence with St. Clair River	+579	+581	Township of Cottrellville.
	At confluence with Robbins Drain	+580	+581	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
South Channel/St. Clair River	At confluence with Lake St. Clair	+578	+579	City of Algonac, City of Marine City, City of Marysville, City of Port Huron, City of St. Clair, Township of Clay, Township of Cottrellville, Township of East China, Township of St. Clair.
	At Dunn Paper Gage	+582	+584	
Swan Creek	At confluence with Lake St. Clair	+578	+579	Township of Ira.
	Downstream side of Arnold Road	+589	+590	
Swan Creek	Downstream side of Marine City Highway	None	+603	Township of Casco.
	Upstream side of Marine City Highway	None	+603	

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

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

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

ADDRESSES

City of Algonac
Maps are available for inspection at 805 St. Clair Drive, Algonac, MI 48001.

City of Marine City
Maps are available for inspection at 303 South Water Street, Marine City, MI 48039.

City of Marysville
Maps are available for inspection at 1111 Delaware Avenue, Marysville, MI 48040.

City of Port Huron
Maps are available for inspection at 100 McMorran Boulevard, Port Huron, MI 48060.

City of St. Clair
Maps are available for inspection at 547 North Carney Drive, St. Clair, MI 48079.

Township of Burtchville
Maps are available for inspection at 4000 Burtch Road, Lakeport, MI 48059.

Township of Casco
Maps are available for inspection at 4512 Meldrum Road, Casco, MI 48064.

Township of Clay
Maps are available for inspection at 4710 Pte. Tremble Road, Algonac, MI 48001.

Township of Cottrellville
Maps are available for inspection at 7008 Marsh Road, Cottrellville, MI 48039.

Township of East China
Maps are available for inspection at 5111 River Road, East China, MI 48054.

Township of Ira
Maps are available for inspection at 7085 Meldrum Road, Fair Haven, MI 48023.

Township of Riley
Maps are available for inspection at 13042 Belle River Road, Riley, MI 48041.

Township of St. Clair
Maps are available for inspection at 1539 South Bartlett Road, St. Clair, MI 48079.

St. Joseph County, Michigan, and Incorporated Areas

Adams Lake	Entire shoreline of Adams Lake	None	+843	Township of Leonidas.
Clear Lake	Entire shoreline of Clear Lake	None	+876	Township of Fabius.
Corey Lake	Entire shoreline of Corey Lake	None	+877	Township of Fabius.
Flowerfield Creek	Approximately 0.8 mile downstream of M 216 (Marcellus Road).	None	+817	Township of Flowerfield.
	Approximately 0.3 mile upstream of Main Street on the St. Joseph County/Kalamazoo County border.	None	+842	
Kaiser Lake	Entire shoreline of Kaiser Lake	None	+877	Township of Fabius.
Long Lake	Entire shoreline of Long Lake	None	+892	Township of Fabius.
Mud Lake	Entire shoreline of Mud Lake	None	+877	Township of Fabius.
Pleasant Lake	Entire shoreline of Pleasant Lake	None	+853	Township of Fabius.
Spring Creek	At confluence with Flowerfield Creek	None	+821	Township of Flowerfield, Township of Park.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
St. Joseph River	Approximately 0.6 mile upstream of Quake Road on the St. Joseph County/Kalamazoo County border.	None	+844	Township of Mendon.
	Approximately 0.7 mile downstream of Wakeman Road.	None	+829	
	Approximately 350 feet downstream of Wakeman Road.	None	+829	

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

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

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

ADDRESSES

Township of Fabius
Maps are available for inspection at 13108 Broadway, Three Rivers, MI 49093.

Township of Flowerfield
Maps are available for inspection at 12020 M–216, Marcellus, MI 49067.

Township of Leonidas
Maps are available for inspection at 53312 Fulton Road, Leonidas, MI 49066.

Township of Mendon
Maps are available for inspection at 136 West Main Street, Mendon, MI 49072.

Forrest County, Mississippi, and Incorporated Areas

Black Creek	At Forrest/Perry county boundary	None	+140	Unincorporated Areas of Forrest County.
	At Lamar/Forrest county boundary	None	+205	
Boggy Branch	At the confluence of Greens Creek	None	+172	Unincorporated Areas of Forrest County, City of Petal.
	Approximately 2,870 feet upstream of Otis Lee Road	None	+233	
Gordons Creek	Just upstream of West Street	+160	+159	City of Hattiesburg.
	Approximately 2,260 feet upstream of Interstate 59	None	+252	
Greens Creek	At Chappell Hill Road	None	+171	Unincorporated Areas of Forrest County, City of Petal.
	Approximately 4,220 feet upstream of Robertson Road.	None	+242	
Little Beaver Creek	Approximately 2,820 feet downstream of Churchwell Road.	None	+187	Unincorporated Areas of Forrest County.
	At Lamar/Forrest county boundary	None	+237	
Mixons Creek	At Highway 49	None	+163	City of Hattiesburg.
	At Interstate 59	None	+176	
	Approximately 120 feet upstream of Interstate 59	None	+176	
	Approximately 380 feet upstream of Interstate 59	None	+176	
	Approximately 2,080 feet downstream of West 4th Street.	None	+193	
Mixons Creek Tributary 1	Approximately 2,900 feet upstream of Dogwood Cove	None	+197	City of Hattiesburg.
	Approximately 3,800 feet upstream of Dogwood Cove	None	+204	
Mixons Creek Tributary 2	Approximately 118 feet downstream of Spring Hill Drive.	None	+190	City of Hattiesburg.
	Approximately 1,460 feet upstream of Bridges Circle	None	+208	
Mixons Creek Tributary 4	Just upstream of Joy Drive	None	+196	City of Hattiesburg.
	Approximately 1.8 miles upstream of Joy Drive	None	+283	
Unnamed Tributary 2	Approximately 111 feet downstream of Hillcrest Loop	None	+149	City of Petal.
	Approximately 335 feet upstream of Chandler Lane	None	+188	

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

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

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

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

ADDRESSES

City of Hattiesburg
Maps are available for inspection at Building of Inspection Department, 200 Forrest Street, Hattiesburg, MS 39401.

City of Petal
Maps are available for inspection at City Hall, 107 West Eighth Avenue, Petal, MS 39401.

Unincorporated Areas of Forrest County
Maps are available for inspection at Forrest County Board of Supervisor's Office, 629 Main Street, Hattiesburg, MS 39401.

Richland County, North Dakota, and Incorporated Areas

Sheyenne River	50 feet upstream of Gol Bridge	None	+956	Richland County, Township of Barrie.
	1,696 feet downstream of 151st Ave SE	None	+986	
Upstream Wahpeton Breakout, Breakout Reach.	100 feet upstream of 182nd Ave SE	None	+964	Township of Center, City of Wahpeton, Township of Summit.
	64 feet downstream of 182nd Ave SE	None	+966	
Upstream Wahpeton Breakout, Drain 55.	49 feet upstream of State Highway 127	None	+965	Township of Summit, Township of Center.
Upstream Wahpeton Breakout, West Breakout Reach.	220 feet upstream of 78th Street SE	None	+955	Township of Center, City of Wahpeton.
	36 feet upstream of 83rd Street SE	None	+963	
Wild Rice River	1,118 feet upstream of ND Highway 46	None	+923	Township of Walcott.
	2,466 feet downstream of 60th Street SE	None	+930	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Wahpeton
Maps are available for inspection at 1900 N 4th Street, Wahpeton, ND 58074.

Richland County
Maps are available for inspection at 418 2nd Ave North, Wahpeton, ND 58075–4400.

Township of Barrie
Maps are available for inspection at 5515 160th Ave SE, Kindred, ND 58051.

Township of Center
Maps are available for inspection at 17915 84th Street SE, Wahpeton, ND 58075.

Township of Summit
Maps are available for inspection at 8945 179th Ave SE, Fairmount, ND 58030.

Township of Walcott
Maps are available for inspection at 5470 County Road #1, Kindred, ND 58051.

Lake County, South Dakota, and Incorporated Areas

Park Creek	1,720 feet downstream of 4th Street S	+1656	+1657	City of Madison.
	75 feet upstream from Washington Ave N	+1674	+1671	
	50 feet upstream of 9th Street NE	+1685	+1684	
Park Creek Tributary	150 feet downstream from Union Ave	+1682	+1681	City of Madison.
	150 feet upstream from Chicago Ave	+1685	+1684	
	50 feet upstream of U.S. Highway 81	+1691	+1695	
Silver Creek	At confluence with Park Creek	+1658	+1659	City of Madison.
	100 feet downstream from Egan Ave	+1663	+1665	
	50 feet upstream of Highland Avenue	+1669	+1671	

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+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

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

ADDRESSES

City of Madison
Maps are available for inspection at 116 W Center, Madison, SD 57042.

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

Dated: October 27, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–26306 Filed 11–4–08; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 73, No. 215
Wednesday, November 5, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0115]

Notice of Request for Extension of Approval of an Information Collection; National Veterinary Accreditation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the national veterinary accreditation program.

DATES: We will consider all comments that we receive on or before January 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0115* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0115, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0115.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the veterinary accreditation program, contact Ms. Lynn Thomas, Management Analyst, Surveillance and Identification Programs, NCAHP, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 734–5777. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: National Veterinary Accreditation Program.

OMB Number: 0579–0032.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests and for eradicating such diseases when feasible.

To help us accomplish our mission, APHIS' Veterinary Services (VS) administers the National Veterinary Accreditation Program. This program accredits and authorizes private veterinary practitioners to work cooperatively with Federal veterinarians, as well as with State animal health officials, to conduct certain activities for us. Accredited veterinarians are instrumental in increasing our capacity to perform health certifications and conduct extensive disease surveillance and monitoring.

The program requires the use of certain information collection activities, including VS Form 1–36A (Application for Veterinary Accreditation), explanation statement for refused endorsement, updated contact information, and veterinary accreditation certificate.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.35289 hours per response.

Respondents: Private veterinary practitioners, State animal health officials, accredited veterinarians.

Estimated annual number of respondents: 5,001.

Estimated annual number of responses per respondent: 1.70

Estimated annual number of responses: 8,501.

Estimated total annual burden on respondents: 3,001 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26385 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0116]

Notice of Request for Extension of Approval of an Information Collection; Standards for Privately Owned Quarantine Facilities for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for privately owned quarantine facilities for ruminants.

DATES: We will consider all comments that we receive on or before January 5, 2009.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2008–0116 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2008–0116, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0116.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for privately owned quarantine facilities for ruminants, contact Dr. James Davis, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–8364. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Standards for Privately Owned Quarantine Facilities for Ruminants.

OMB Number: 0579–0232.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation of animals, animal products, and other articles into the United States to prevent the introduction of animal diseases and pests.

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. APHIS operates animal quarantine facilities and also authorizes the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations at subpart D of part 93 (9 CFR 93.400 through 93.435) pertain to the importation of ruminants. Ruminants include all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes. Ruminants imported into the United States must be quarantined upon arrival for at least 30 days, with certain exceptions. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

Regulations for privately owned quarantine facilities for ruminants require the use of certain information collection activities, including applications for facility approval, compliance agreements explaining the conditions under which the facility must be operated, certifications that the facility meets all applicable environmental regulations, requests for variance, and maintenance of certain records covering quarantine operations.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 2.9481818 hour per response.

Respondents: Owners/operators of privately owned quarantine facilities for ruminants.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 55.

Estimated annual number of responses: 55.

Estimated total annual burden on respondents: 162 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26384 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0114]

Notice of Request for Revision and Extension of Approval of an Information Collection; State-Federal Brucellosis Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision and extension of approval of an information collection associated with the State-Federal Brucellosis Eradication Program.

DATES: We will consider all comments that we receive on or before January 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0114* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0114, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0114.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the State-Federal Brucellosis Eradication Program, contact Dr. Debra Donch, Senior Staff Veterinarian, Ruminant Health Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–5952. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: State-Federal Brucellosis Eradication Program.

OMB Number: 0579–0047.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests and for eradicating such diseases when feasible.

Brucellosis is a contagious disease that primarily affects cattle, bison, and swine. It causes the loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. The continued presence of brucellosis in a herd seriously threatens the health of other animals. Brucellosis has caused devastating losses to farmers in the United States over the last century.

The State-Federal Brucellosis Eradication Program, a national cooperative program, is working to eradicate this serious disease of livestock from the United States. The program uses a system of State and area classifications, movement restrictions, screening programs, extensive epidemiological investigations, and other measures to prevent its spread and eradicate the disease.

These measures require the use of many information collection activities and associated forms, including applications for brucellosis classification or reclassification of a State or area, certified brucellosis-free herd, or validated brucellosis-free herd; monthly reports of brucellosis program and surveillance activities; quarterly reports of swine brucellosis eradication; brucellosis test records; reports of backtags applied; brucellosis ring test rack charts and patron lists; calfhood vaccination records; field investigations of brucellosis market test reactors; logs for market cattle test reactors; reports of epidemiologic investigations of brucellosis reactor herds; permits for movement of restricted animals; appraisals and indemnity claims for animals destroyed; justifications (facsimile reports) for herd depopulation; agreements for complete herd depopulation; certificates of veterinary inspection; and quarantine and quarantine release forms.

These information collection activities are essential in determining the brucellosis status of an area and helping herd owners by allowing the timely detection and elimination of a serious disease.

Four Office of Management and Budget (OMB) forms (currently approved under OMB number 0579–0032) are being added to this collection for use in the State-Federal brucellosis eradication program: VS 4–24, Calfhood Vaccination Record (short form); VS 4–26, Calfhood Vaccination Record (long form); VS 4–33, Brucellosis Test Record; and VS 4–54, Brucellosis Test Record—Market Cattle Testing Program. After OMB approves the burden described in this notice, OMB number 0579–0047 will be assigned to all associated forms.

We are asking OMB to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3742576 hours per response.

Respondents: Hobby and commercial livestock farm owners and/or managers; animal agriculture-related business

owners and/or managers; accredited veterinarians; animal agriculture-related agencies and organizations; breed registry agencies; agriculture extension agents; fair and exhibition officials; owners, operators, and/or managers of livestock markets; livestock dealers, owners, operators, and/or managers of slaughter establishments and dairy plants; and State animal health officials and laboratory personnel.

Estimated annual number of respondents: 117,446.

Estimated annual number of responses per respondent: 10.023508.

Estimated annual number of responses: 1,177,221.

Estimated total annual burden on respondents: 440,584 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26386 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0110]

Multi-Agency Informational Meeting Concerning Compliance With the Federal Select Agent Program; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify all interested parties, including individuals and entities possessing, using, or transferring biological agents and toxins listed in 7 CFR 331.3, 9 CFR 121.3, or 42 CFR 73.3, that a meeting will be held to provide specific regulatory guidance related to the Federal Select Agent Program established under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The meeting is being organized by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, the Department of Health and Human Services' Centers for Disease Control and Prevention, and the Department of Justice's Federal Bureau of Investigation. Issues to be discussed include entity registration, security risk assessments, biosafety requirements, and security measures.

DATES: The meeting will be held on Tuesday, December 9, 2008, from 8 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737.

FOR FURTHER INFORMATION CONTACT: For more information, please contact the Agricultural Select Agent Program by telephone at (301) 734–5960 or by e-mail to *Agricultural.Select.Agent.Program@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Title II of the Act, ''Enhancing Controls on Dangerous Biological Agents and Toxins'' (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture. CDC and APHIS list select agents and toxins in 42 CFR 73.3 and in 7 CFR 331.3 and 9 CFR 121.3, respectively. The Federal Bureau of Investigation's (FBI) Criminal Justice Information Service conducts security risk assessments of all individuals and nongovernmental entities that request to possess, use, or transfer select agents and toxins.

The meeting announced here is an opportunity for the regulated community (i.e., registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information on standards concerning biosafety and biosecurity issues related to the Federal Select Agent Program. Representatives from CDC, APHIS, and the FBI will be present at the meeting to address questions and concerns. Entity registration, security risk assessments, biosafety requirements, and security measures are among the issues that will be discussed.

All attendees must register in advance of the meeting. For those unable to attend in person, the meeting will be available at no cost as a Webcast over the Internet for a limited number of registrants. Registration forms may be downloaded from the National Select Agent Registry's Web site at *http://www.selectagents.gov;* by request via telephone to (301) 734–5960; or by request via e-mail to *Agricultural.Select.Agent.Program@aphis.usda.gov*.

Travel directions to the USDA Center at Riverside are available on the Internet at *http://www.aphis.usda.gov/plant_health/general_info/directions_riverdale.shtml*. Picture identification is required to gain access to the building. Parking is available next to the building for a $2.25 fee (please have quarters or crisp bills available for machine). The nearest Metro station is the College Park station on the Green Line, which is within walking distance.

If you require special accommodations, such as a sign language interpreter, please see the contact information listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 30th day of October 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26387 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's intention to revise a currently approved information collection entitled, ''Cooperative State Research, Education, and Extension Service Application Kit for Research and Extension Programs''.

DATES: Written comments on this notice must be received by January 9, 2009, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice may be sent to Jason Hitchcock, USDA/CSREES/ISTM, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216 or sent electronically to: *jhitchcock@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection, contact Jason Hitchcock, *e-mail: jhitchcock@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cooperative State Research, Education, and Extension Service Application Kit for Research and Extension Programs.

OMB Number: 0524–0039.

Expiration Date of Current Approval: April 30, 2009.

Type of Request: Revise a currently approved information collection.

Abstract: The Cooperative State Research, Education, and Extension Service (CSREES) sponsors ongoing agricultural research, extension, and education programs under which competitive, formula, and special awards of a high-priority nature are made. Before awards can be made, certain information is required from applicants as part of an application process.

The nature of the competitive, peer-reviewed process makes it important that information from applicants be available in a standardized format to ensure equitable treatment. Each year, request for applications are issued for various research, education, and extension areas targeted for support. Applicants submit applications for these targeted areas following formats outlined in the application guidelines accompanying each program's solicitation. CSREES awards grants after evaluating these applications, using peer review panels and other merit review processes. The forms and narrative information are mainly used for application evaluation and administration purposes. While some of the information is used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys.

CSREES requires submission of grant applications electronically through the Grants.gov storefront. The application processes through Grants.gov leverage several standard forms. In addition to Grants.gov's standards forms, CSREES must collect some additional information for the proper evaluation and processing of applications. These forms include the following:

Supplemental Information Form—This form is used in all grant application packages, and collects the program name and program code to which the applicant is applying, additional applicant type information, Department of Health and Human Services Payment Management System account information, key words, and the conflict of interest information as an attached file.

Application Type Form—This form is used principally by the Agriculture and Food Research Initiative Competitive Grants Program to collect the specific type of application being submitted. This form is being revised to change the applicant type names and some business rules on the form.

Application Modification Form—This form is used to indicate the forms or narrative portions of an application that an applicant has changed or corrected from a previously submitted application.

Form CSREES–2008, Assurance Statement(s)—This form is used in formula grant programs and provides required assurances of compliance with regulations involving the protection of human subjects, animal welfare, and recombinant DNA research.

Form CSREES–2010, Fellowships/Scholarships Entry/Annual Update/Exit Form—This form will apply only to CSREES award recipients to document fellowships and scholarships, pertinent demographic data on the fellows/scholars, the progress of the fellows/scholars under the program, and performance outcomes of the student beneficiaries.

Respondents: Non-profit institutions, State, local, or Tribal governments, and a limited number of for-profit institutions and individuals.

Estimated Number of Respondents by form:

Supplemental Information: 5,050.

Application Type: 2,150.

Application Modification: 0.

Form CSREES–2008, Assurance Statement(s): 1,850.

CSREES–2010, Fellowships/Scholarships Entry/Exit: 150.

Summary of USDA/1890 Cooperation: 170.

The individual form burden is as follows (calculated based on a survey of grant applicants conducted by CSREES):

Supplemental Information: 2 hours.

Application Type: 15 minutes.

Application Modification: 5 minutes.

Form CSREES–2008, Assurance Statement(s): 30 minutes CSREES–2010, Fellowships/Scholarships Entry/Annual.

Update/Exit: 3 hours.

Summary of USDA/1890 Cooperation: 50 minutes.

Estimated Total Annual Burden on Respondents: The annual total burden on the public for all forms is estimated to be 12,160 hours.

Frequency of Responses: Annually.

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 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 other forms of information technology. Comments should be sent to the address stated in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 29th day of Oct, 2008.

Gale Buchanan,

Undersecretary, Research, Education, and Economics.

[FR Doc. E8–26354 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation; Information Collection; Debt Settlement Policies and Procedures

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are requesting comments from all interested individuals and organizations on an extension of a currently approved information collection that supports the FSA and CCC Debt Settlement Policies and Procedures regulations.

DATES: Comments on this notice must be received on or before January 5, 2009 to be assured consideration.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

Mail: Thomas F. Harris II, Claims Program Specialist, Financial Management Division, Office of Budget and Finance, Farm Service Agency, USDA, STOP 0581, 1400 Independence Ave., SW., Washington, DC 20250–0581, or 3101 Park Center Drive, Suite 1210, Alexandria, Virginia 22302.

E-mail: Send comment to: *tom.harris@wdc.usda.gov*.

Fax: (703) 305–1148.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Thomas F. Harris II at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas F. Harris II, Claims Program Specialist, telephone (703) 305–1439.

SUPPLEMENTARY INFORMATION:

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Expiration Date of Approval: May 31, 2009.

Type of Request: Extension with no revision.

Abstract: This information collection is needed to enable FSA and CCC to effectively administer the regulations at 7 CFR 792 (FSA) and 7 CFR 1403 (CCC) on debt settlement policies and procedures and on the identification of and settlement of outstanding claims. Collection of outstanding debts owed to FSA or to CCC can be effected by installment payments if a debtor furnishes satisfactory evidence of inability to pay a claim in full, and if the debtor specifically requests an installment agreement. Part of the requirement is that the debtor furnishes this request in writing and with a financial statement or other information that would disclose a debtor's assets and liabilities. This information is required in order to evaluate any proposed plan. Such requests for documentation furnished by the debtor are also used in the other collection tools employed by both FSA and CCC in managing debt settlement policies and procedures. If an installment agreement is approved, then a Promissory Note (CCC–279), or an approved alternative promissory note format, must be executed between the debtor and the FSA/CCC representative(s).

During the past two years, over $7,470,969 in debt collection was facilitated by the use of this requested information and 141 Promissory Notes were established between debtors and FSA and CCC. Total active Note amount for the past two years is presently 235 total Promissory Notes (includes total notes established (141); notes defaulted (21), notes written off (20) and notes discharged in Bankruptcy (2)) with a total outstanding amount of $7,043,331.11.

The Debt Collection Improvement Act of 1996 requires the head of an agency to take all appropriate steps to collect delinquent debts before discharging such debts. The current information collection forms and formats have been successfully used for the past several years and have become familiar tools for both the agency employees and for the producer. Thus, adequate forms and formats already exist and are in use. Developing new forms and formats could be costly and is not required to meet the demands of the Debt Collection Improvement Act of 1996. Nonetheless, comment is requested on how the forms and process may be improved, as specified below.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 1 hour per response. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Respondents: Producers participating in FSA and CCC programs.

Estimated Number of Annual Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 200 hours.

Comments Are Invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhancing the quality, utility and clarity of the information to be collected; or

(4) Minimizing 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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on October 29, 2008.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. E8–26290 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5818, South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078; *Fax:* (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether this 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 collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic,

mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. *Fax:* (202) 720–8435.

Title: Advance of Loan Funds and Budgetary Control and Other Related Burdens.

OMB Control Number: 0572–0015.

Type of Request: Extension of a currently approved collection.

Abstract: This collection is necessary to comply with the applicable provisions of the RUS loan contract. Borrowers submit requisitions to RUS for funds for project costs incurred. Insured loan funds will be advanced only for projects which are included in the RUS approved borrower's construction workplan or approved amendment and in an approved loan, as amended. The process of loan advances establishes the beginning of the audit trail of the use of loan funds which is required for subsequent RUS compliance audits.

The RUS Form 595 is used as a requisition for advances of funds. The form helps to assure that loan funds are advanced only for the budget purposes and amount approved by RUS. According to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance, which such funds are for projects previously approved.

When a prospective borrower requests and is granted an RUS loan, a loan contract is established between the Federal government, acting through the RUS Administrator, and the borrower. At the time this contract is entered into, the borrower must provide RUS with a list of projects for which loan funds will be spent, along with an itemized list of the estimated costs of these projects. Thus, the borrower receives a loan based upon estimated cost figures.

RUS Form 219, Inventory of Work Orders, is one of the documents the borrower submits to RUS to support actual expenditures and an advance of loan funds. The form also serves as a connecting link and provides an audit trail that originates with the advance of funds and terminates with evidence supporting the propriety of expenditures for construction or retirement projects.

Estimate of Burden: The Public reporting burden for this collection of information is estimated to average 1.57 hours per response.

Respondents: Not-for-profit institutions; Business or other for profit.

Estimated Number of Respondents: 670.

Estimated Number of Responses per Respondent: 15.37.

Estimated Total Annual Burden on Respondents: 16,215.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. *Fax:* (202) 720–8435.

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.

Dated: October 29, 2008.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E8–26315 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant and Loan Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development, announces its Revolving Fund Program (RFP) application window for Fiscal Year (FY) 2009. In addition to announcing the application window, Rural Development announces the available funding and maximum amounts for RFP competitive grants for the fiscal year. This notice is being issued prior to passage of a final appropriations bill, which may or may not provide for funding this program, to allow applicants sufficient time to leverage financing and submit applications. Rural Development will publish a subsequent notice identifying the amount received in the appropriations, if any.

The RFP is authorized under section 306(a) of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1926(a), as amended by section 6001 of the Food, Conservation & Energy Act of 2008 (2008 Farm Bill), Public Law 110–246. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Rural Development Utilities Programs Water and Waste Disposal loan and grant programs.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than May 31, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications will not be eligible for FY 2009 grant funding.
- Electronic copies must be received by May 31, 2009 to be eligible for FY 2009 grant funding. Late or incomplete applications will not be eligible for FY 2009 grant funding.

ADDRESSES: You may obtain application guides and materials for the RFP program at the Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/water/index.htm.* You may also request application guides and materials by contacting Anita O'Brien at (202) 690–3789.

Submit completed paper applications for RFP grants to the Rural Development Utilities Programs, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''*Attention:* Assistant Administrator, Water and Environmental Programs.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov) and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Anita O'Brien, Loan Specialist, U.S. Department of Agriculture, Rural Development Utilities Programs, Water and Environmental Programs; *telephone:* (202) 690–3789, *fax:* (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

Announcement Type: Funding Level Announcement, and Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.864.

Due Date for Applications: May 31, 2009.

Reminder of Competitive Grant Application Deadline: Applications

must be mailed, shipped or submitted electronically through Grants.gov no later than May 31, 2009 to be eligible for FY 2009 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the RFP.
II. Award Information: Available funds, maximum amounts.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

Rural Development provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need. It supports the sound development of rural communities and the growth of our economy without endangering the environment.

The Revolving Fund (RFP) Grant Program has been established to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Water and Waste Disposal loan and grant programs administered by Rural Development. As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The interest rate on loans made under RFP shall be determined in the approved grant work plan.

II. Award Information

Available funds: Rural Development will publish a subsequent notice announcing the amount of funds available once a final Appropriations bill is enacted for FY 2009.

III. Eligibility Information

A. Who is eligible to apply?

An applicant is eligible to apply for the RFP grant if it:

1. Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Is legally established and located within one of the following:

(a) A state within the United States;

(b) The District of Columbia;

(c) The Commonwealth of Puerto Rico; or

(d) A United States territory;

3. Has the legal capacity and authority to carry out the grant purpose;

4. Has a proven record of successfully operating a revolving loan fund to rural areas;

5. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

6. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt; and

7. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

B. What are the basic eligibility requirements for a project?

1. The following activities are authorized under the RFP statute:

(a) Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to Ultimate Recipients for pre-development costs associated with proposed or with existing water and wastewater systems, *or*,

(b) Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

2. Grant funds may not be used to pay either of the following:

(a) Payment of the Intermediary's administrative costs or expenses, or,

(b) Delinquent debt owed to the Federal Government.

IV. Application and Submission Information

A. The grant application guide, copies of necessary forms and samples, and the RFP regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/water/index.htm* or *http://www.grants.gov*.

2. For paper copies of these materials telephone (202) 690–3789.

B. You may file an application in either paper or electronic format.

1. Applications submitted by paper:

(a) Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Assistant Administrator–Water and Environmental Programs, Rural Development Utilities Programs, 1400 Independence Avenue, SW., STOP 1548, Room S–5145, Washington, DC, 20250–1548.

(b) For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.

2. Electronically submitted applications:

(a) For electronic applications you must file through Grants.gov, the official Federal Government Web site at *http://www.grants.gov*. You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will need a DUNS number to access or register at any of the services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. Rural Development may request original signatures on electronically submitted documents later.

(b) The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1–888–227–2423 or, you may register online at *http://www.ccr.gov*.

(c) The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when

you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov at the following Web address: *https://apply.grants.gov/OrcRegister*.

(d) *DUNS Number:* Whether you file a paper or an electronic application, you will need a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. You must provide your DUNS number on the SF–424, ''Application for Federal Assistance.'' To verify that your organization has a DUNS number or to receive one at no cost, call the dedicated toll-free request line at 1–866–705–5711 or access the Web site at *http://www.dunandbradstreet.com*. The following information is needed when requesting a DUNS number:

(1) Legal Name.

(2) Headquarters name and address of the organization.

(3) Doing business as (dba) or other name by which the organization is commonly recognized.

(4) Physical address.

(5) Mailing address (if separate from headquarters and/or physical address).

(6) Telephone number.

(7) Contact name and title.

(8) Number of employees at the physical location.

(e) Rural Development will not accept applications by fax or e-mail.

C. A complete application must meet the following requirements:

1. To be considered for support, you must be an eligible entity and must submit a complete application by the deadline date. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements. Applications should be prepared in conformance with the provisions in 7 CFR 1783, and applicable USDA regulations including 7 CFR parts 3015, 7 CFR parts 3019, and OMB Circular A–122.

2. Applicants must complete and submit the following forms to apply for a RFP grant:

(a) Standard Form 424, ''Application for Federal Assistance.''

(b) Standard Form 424A, ''Budget Information—Non-Construction Programs.''

(c) Standard Form 424B, ''Assurances—Non-Construction Programs.''

(d) Standard Form LLL, ''Disclosure of Lobbying Activity.''

(e) Form RD 400–1, ''Equal Opportunity Agreement.''

(f) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).''

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

(a) Present a brief project overview. Explain the purpose of the project, how it relates to Rural Development's purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

(c) Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

(d) The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of revolving funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(1) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR Part 1783.

(2) Document that, to establish the revolving fund, you can commit financial resources your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

(e) The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP. The plan must:

(1) Describe the work to be performed by each person.

(2) Give a schedule or timetable of work to be done.

(3) Show evidence of previous experience with the techniques to be used or their successful use by others.

(4) Outline the loan program to include the following: Specific loan purposes, a loan application process; priorities, borrower eligibility criteria, limitations, fees, interest rates, terms, and collateral requirements.

(5) Provide a marketing plan.

(6) Explain the mechanics of how you will transfer loan funds to the borrowers.

(7) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(8) Describe how the results will be evaluated. The evaluation criteria should be in line with the project objectives.

(9) List all personnel responsible for administering this program along with a statement of their qualifications and experience.

(f) The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

(g) In addition to completing the standard application forms, you must submit:

1. Supplementary material that demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters

from the IRS awarding tax-exempt status are not considered adequate evidence.

2. A certified list of directors and officers with their respective terms.

3. Evidence of tax exempt status from the IRS.

4. Debarment and suspension information required in accordance with 7 CFR, Part 3017, subpart 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

5. All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR, Part 3021, subpart 3021.230. The section heading is ''How and when must I identify workplaces?'' It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

6. The most recent audit of your organization.

7. The following financial statements:

i. A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income statements, and cash flow statements for the last three years.

ii. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present. Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

8. Additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project such as letters of support, resolutions, policies, etc. The supplements may be presented in appendices to the proposal.

V. Application Review Information

A. Within 30 days of receiving your application, Rural Development will send you a letter of acknowledgment. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, Rural Development will return it to you with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

Scoring criteria	Points
1—Degree of expertise and successful experience in making and servicing commercial loans, with a successful record	Up to 30 points.
2—Extent to which the work plan demonstrates a well thought out comprehensive approach to accomplishing objectives; clearly defines who will be served by the project or program; clearly articulates the problem/issues to be addressed, identifies the service area to be covered by the RFP loans, and appears likely to be sustainable.	Up to 40 points.
3—Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:	
Less than 20 percent	Ineligible.
At least 20 percent but not more than 49 percent of the total project costs	10 points.
At least 50 percent of the total project costs	20 points.
4—Extent to which the goals and objectives are clearly defined, tied to the work plan, and are measurable	Up to 15 points.
5—Lowest ratio of projected administrative expenses to loans advanced	Up to 10 points.
6—Evaluation methods for considering loan applications and making RFP loans are specific to the program, clearly defined, measurable, and are consistent with program outcomes.	Up to 20 points.
7—Administrator's discretion, taking into consideration such factors as:	Up to 10 points.
Creative outreach ideas for marketing RFP loans;.	
Amount of funds requested in relation to the amount of needs demonstrated in the proposal;.	
Excellent utilization of a previous revolving loan fund; and,.	
Optimizing the use of agency resources..	

VI. Award Administration Information

A. Rural Development will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, Rural Development may determine that your application is:

1. Eligible and selected for funding,

2. Eligible but offered fewer funds than requested,

3. Eligible but not selected for funding, or

4. Ineligible for the grant.

C. In accordance with 7 CFR Part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied Rural Development funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Grantee will provide project reports as follows:

1. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

2. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

3. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/water.* The Rural Development Utilities Programs Web site maintains up-to-date resources and contact information for the RFP.

B. *Phone:* 202–690–3789.

C. *Fax:* 202–690–0649.

D. *E-mail: anita.obrien@wdc.usda.gov.*

E. *Main point of contact:* Anita O'Brien, Loan Specialist, Water and Environmental Programs, Water Programs Division, Rural Development Utilities Programs, U.S. Department of Agriculture.

Dated: October 16, 2008.

Curtis M. Anderson,

Deputy Administrator, Rural Utilities Service.

[FR Doc. E8–26322 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

PowerSouth Energy Cooperative, Incorporated: Notice of Intent To Hold Public Scoping Meeting and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold Public Scoping Meeting and Prepare an Environmental Assessment (EA).

SUMMARY: The Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or the Agency, intends to hold a public scoping meeting and prepare an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR 1794 in connection with potential impacts related to projects proposed by PowerSouth Energy Cooperative, Inc. (PowerSouth) of Andalusia, Alabama. The proposal consists of the construction of a new 360-megawatt peaking-load gas-fired generation facility at the existing McIntosh Power Plant. PowerSouth is requesting USDA Rural Development to provide financial assistance for the proposed action.

DATES: Rural Development will conduct a scoping meeting in an open house format in order to provide information and solicit comments for the preparation of an EA. The meeting will be held on November 20, 2008, from 6:30 p.m. until 8:30 p.m. at the McIntosh Elementary School in McIntosh, Alabama. Written questions and comments must be received no later than December 22, 2008.

ADDRESSES: To send comments or for further information, contact: Stephanie Strength, Environmental Protection Specialist, Rural Development Utilities Programs, Engineering and Environmental Staff, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov.* The McIntosh Elementary School is located at 8945 Highway 43 N.Highway 43 North, Highway 43 Northon the west side of Highway 43 near the Ciba Plant entrance, McIntosh, Alabama, telephone (251) 944–2481. An Alternatives Report prepared by PowerSouth will be available at the public scoping meeting, at the Agency's address provided in this notice, at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm*, at PowerSouth Energy Cooperative, Inc., 2027 East Three Notch Street, Andalusia, Alabama 36420, and at the:

McIntosh Branch Library, 83 Olin Road, McIntosh, AL 36553, Phone: 251–944–2047.

Washington Public Library, 14102 St. Stephens Avenue, Chatom, AL 36515. Phone: 251–847–2097.

SUPPLEMENTARY INFORMATION: PowerSouth Energy Cooperative, Inc. proposes to construct a new 360-megawatt peaking-load gas-fired generation facility at the existing McIntosh Power Plant in Washington County, Alabama with an in-service date of late 2010.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from the Agency and PowerSouth Energy Cooperative, Inc. will be available at the scoping meeting to discuss the environmental review process, describe the proposal, discuss the scope of environmental issues to be considered, answer questions, and accept comments. As part of its broad environmental review process, the Agency must take into account the effect of the proposal on historic properties in accordance with Section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR Part 800). Pursuant to 36 CFR 800.2(d)(3), the Agency is using its procedures for public involvement under NEPA to meet is responsibilities to solicit and consider the views of the public during Section 106 review. Accordingly, comments submitted in response to scoping will inform Agency decision making in Section 106 review. Any

party wishing to participate more directly with the Agency as a ''consulting party'' in Section 106 review may submit a written request to do so to the Agency contact at the above address.

From information provided in the Alternatives Report, input that may be provided by government agencies, private organizations, and the public, PowerSouth Energy Cooperative, Inc. will prepare an environmental analysis to be submitted to the Agency for review. The Agency will review the environmental analysis to determine the significance of the impacts of the proposal and if acceptable will adopt it as the environmental assessment (EA) of the proposal. The Agency's EA would be available for review and comment for 30 days, with a notice of availability published in area newspapers and the **Federal Register**. Should the Agency determine that the preparation of an Environmental Impact Statement is not necessary, it will prepare a Finding of No Significant Impact (FONSI). Public notification of a FONSI would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by Rural Development related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by the Agency's environmental policies and procedures (7 CFR 1794).

Dated: October 30, 2008.

Ben Shuman,

Acting Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E8–26388 Filed 11–4–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee (CAC) on the Hispanic Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by December 5, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or by e-mail to *jeri.green@census.gov*.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, CAC Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Hispanic communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Hispanic population, and on ways data can be disseminated for maximum usefulness to the Hispanic population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce. They are appointed to the nine-member Committee for a period of three years.

2. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, advisory committee needs, and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce (DOC) guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership, as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the Hispanic community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Hispanic population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) must be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The DOC is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: October 30, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–26383 Filed 11–4–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods From India: Final Results of Changed-Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that India Steel Works Limited (India Steel) is the successor-in-interest to Isibars Limited (Isibars). As a result, India Steel will be accorded the same treatment previously accorded to Isibars with regard to the antidumping duty order on stainless steel wire rods from India as of the date of publication of this notice in the **Federal Register**.

DATES: *Effective Date:* November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Edythe Artman and Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3931 and (202) 482–1690.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1993, the Department published an antidumping duty order on wire rods from India. *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993). On August 4, 2008, the Department received a request for a changed-circumstances review of this order from India Steel to determine if, for purposes of the antidumping law, India Steel is the successor-in-interest to Isibars.

On September 25, 2008, the Department published the notice of initiation for this changed-circumstances review and preliminarily found that India Steel is the successor-in-interest to Isibars and should be treated as such for antidumping duty cash-deposit purposes. See *Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Wire Rods from India*, 73 FR 55498 (September 25, 2008). We invited parties to comment on the preliminary results but received no comments or requests for a hearing.

Scope of the Review

The merchandise under review is wire rods, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. Wire rods are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of wire rods sold in the United States are round in cross-section shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The wire rods subject to this order are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive of whether the merchandise is covered by the order.

Final Results of Changed-Circumstances Review

For the reasons stated in the preliminary results and because the Department did not receive any comments on the preliminary results of this review, the Department continues to find that India Steel is the successor-in-interest to Isibars for antidumping duty cash-deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all shipments of the subject merchandise produced and exported by India Steel entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice at 30.10 percent (*i.e.*, Isibars's cash-deposit rate, as published in *Stainless Steel Wire Rod From India: Amended Final Results of Antidumping Duty Administrative Review*, 70 FR 47177 (August 12, 2005)). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which India Steel participates.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

This notice in accordance with sections 751(b) and 777(i)(1) of the Act, and sections 351.216(e) and 351.221(c)(3)(i) of the Department's regulations.

Dated: October 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26411 Filed 11–4–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2008, the Department of Commerce (the Department) initiated the second sunset review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department conducted an expedited (120–day) sunset review of this order. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping.

EFFECTIVE DATE: November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–1690, respectively.

Background

On July 1, 2008, the Department initiated the second sunset review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See *Initiation of Five–year (''Sunset'') Review*, 73 FR 37411 (July 1, 2008). The Department received a Notice of Intent to Participate from a domestic interested

party, the Crawfish Processors Alliance (CPA), within the deadline specified in 19 CFR 351.218(d)(l)(i). On July 30, 2008, we received a complete substantive response from CPA within the 30–day deadline in accordance with 19 CFR 351.218(d)(3)(i). We did not receive responses from any other parties. Accordingly, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited (120–day) sunset review of the order.

Scope of Order

The product covered by this antidumping duty order is freshwater crawfish, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Analysis of Comments Received

The issues raised by CPA are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated October 29, 2008, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. The Decision Memo, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of the Review

We determine that revocation of the antidumping duty order on freshwater crawfish tail meat from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturer/Exporter	Percentage Margin
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp.	119.39
Huaiyin Foreign Trade Corp.	91.50
Yancheng Foreign Trade Corp.	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.	122.92
Yancheng Baolong Aquatic Foods Co., Ltd.	122.92
Huaiyin Ningtai Fisheries Co., Ltd.	122.92
Nantong Delu Aquatic Food Co., Ltd.	122.92
PRC–wide Rate	201.63

This notice serves as a reminder to parties subject to the 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.

We are issuing and publishing this notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26394 Filed 11–4–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 26, 2007, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on carbon and alloy steel wire rod (wire rod) from Trinidad and Tobago for the period of review (POR) October 1, 2006, through September 30, 2007.

We preliminarily determine that during the POR, ArcelorMittal Point Lisas Limited,[1] and its affiliate Mittal Steel North America Inc. (MSNA) (collectively, AMPL) made sales of subject merchandise at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

Interested parties are invited to comment on these preliminary results. The Department will issue the final results within 120 days after publication of the preliminary results.

DATES: *Effective Date:* November 5, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Jolanta Lawska, 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) 482–3692 or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Trinidad and Tobago; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (*Wire Rod Orders*). On October 1, 2007, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 72 FR 55741.

We received timely requests for review from petitioners,[2] and AMPL, in accordance with 19 CFR 351.213(b)(2). AMPL also requested that the Department revoke the antidumping duty order pursuant to 19 CFR

[1] ArcelorMittal Point Lisas Limited is the successor-in-interest to Mittal Steel Point Lisas Limited. *See Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 73 FR 30052 (May 23, 2008).

[2] The petitioners are Gerdau Ameristeel U.S. Inc. (formerly Co-Steel Raritan, Inc.), Keystone Consolidated Industries, Inc., North Star Steel Texas, Inc., Nucor Steel Connecticut, Inc., and Rocky Mountain Steel Mills (collectively, petitioners).

351.222(b). On November 26, 2007, the Department published the notice of initiation of this antidumping duty administrative review covering the period October 1, 2006, through September 30, 2007, naming AMPL as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 72 FR 65938 (November 26, 2007). On November 28, 2007, we sent the initial questionnaire covering sections A through D to AMPL.

On December 4, 2007, petitioners requested that the Department obtain from AMPL necessary information in order to be able to determine the proper date of sale and a U.S. sales database that reflects the proper date of sale.

On February 4, 2008, AMPL submitted its sections A through C response to the Department's questionnaire. On February 19, 2008, AMPL submitted its section D response to the Department's questionnaire.

On February 27, 2008, the Department sent AMPL a supplemental questionnaire for sections A through C. We received the response to the supplemental questionnaire on March 26, 2008.

The Department issued a supplemental questionnaire for section D on May 21, 2008, and received the response on June 25, 2008. On August 13, 2008, the Department issued a second supplemental section D questionnaire, and on August 27, 2008, AMPL submitted its response.

On June 13, 2008, AMPL withdrew its request for revocation of the antidumping duty order because AMPL, after further analysis, determined that its estimated dumping margin is greater than *de minimis*, and hence it does not satisfy the requirements of 19 CFR 351.222(b)(2).

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3015, 7213.91.3090, 7213.91.3092, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes,

the written description of the scope of this order is dispositive.[3]

U.S. Sales of Damaged Merchandise

During the POR, AMPL had a small volume of subject merchandise that was damaged during shipment to the United States. According to AMPL, the original customer refused the defective merchandise, which AMPL sold ''as is'' in the U.S. market. AMPL did not include these sales in its questionnaire response; AMPL stated these sales were not reported because they were outside the ordinary course of trade. However, in a supplemental questionnaire response, AMPL did provide the relevant details of the sale, including price and a copy of the invoice.

The statutory provisions concerning ordinary course of trade are only applicable to the calculation of NV based on home-market sales and not to the calculation of the constructed export price (CEP) based on U.S. sales; thus, this is not a basis for excluding these U.S. transactions. *See Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea,* 70 FR 12443 (March 14, 2005), and accompanying Issues and Decisions Memorandum at Discussion of Issues—Company-Specific Comment 6. Further, in antidumping duty administrative reviews we are assessing duties on all entries of subject merchandise. Therefore, we normally include all sales of subject merchandise during the period. Accordingly, we have included all sales of subject merchandise to the United States in the antidumping margin calculations. *See* Preliminary Sales Calculation Memorandum for ArcelorMittal Point Lisas Limited (Preliminary Sales Calculation Memorandum), dated October 30, 2008, which is on file in the Central Records Unit (CRU) at the Department, Room 1117.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), all products produced by the respondent covered by the description in the Scope of the Order section, above, and sold in Trinidad and Tobago during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Comparisons to Normal Value

To determine whether sales of wire rod from Trinidad and Tobago were made in the United States at less than NV, we compared the export price (EP) or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we reduced these prices to reflect discounts and increased the prices to reflect billing adjustments.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, international freight, demurrage expenses, marine insurance, survey fees, U.S. customs duties and various U.S. movement expenses from arrival to delivery.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit and warranty). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared AMPL's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because AMPL had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

In the most recently completed segment of the proceeding in which AMPL participated, the Department found that the respondent made sales in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. *See Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 36955, 36957 (July 6, 2007), unchanged in the *Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 72 FR 62824 (November 7, 2007). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, the Department determined that there were reasonable grounds to believe or suspect that AMPL made sales of wire rod in Trinidad and Tobago at prices below the cost of production (COP) in this administrative review. As a result, we initiated a COP inquiry for AMPL.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses, packing expenses, and interest expense. We did not make any

[3] Effective July 1, 2008, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. *See http://hotdocs.usitc.gov/tariff--chapters--current/toc.html.*

adjustments to AMPL's submitted COP data.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted-average COP to the per-unit price of the comparison market sales of the foreign like product, to determine whether these sales were made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses and packing expenses which were excluded from COP for comparison purposes.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense) and adding U.S. direct selling expenses (credit and warranty directly linked to sales transactions). No other adjustments to NV were claimed or allowed.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR-average costs.

D. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. In identifying LOTs for EP and comparison market sales (*i.e.*, NV based on home market), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision).

In the home market, AMPL reported sales made through one LOT corresponding to one channel of distribution. In the U.S. market, AMPL reported two LOTs corresponding to two channels of distribution. AMPL made sales to an unaffiliated trading company and through its U.S. affiliates. We have determined that the sales made by AMPL directly to U.S. customers are EP sales and those made by AMPL's affiliated U.S. resellers constitute CEP sales. Furthermore, we have found that U.S. sales and home market sales were made at the same LOT. Accordingly, we did not find it necessary to make an LOT adjustment or CEP offset. For further explanation of our LOT analysis see the Preliminary Sales Calculation Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period October 1, 2006, through September 30, 2007:

Producer/Manufacturer	Weighted-average margin
AMPL	1.56%

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, within 120 days of publication of these preliminary results. *See* section 751(a)(3)(A) of the Act.

Assessment Rate

The Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise.

Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by AMPL for which AMPL did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

To calculate the cash deposit rate for AMPL, we divided the total dumping margin by the total net value for AMPL's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for AMPL will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.40 percent, the all-others rate established in the LTFV investigation. *See Wire Rod Orders*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26395 Filed 11–4–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Public Comment Period for the Revised Management Plan for the Chesapeake Bay Virginia National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty day public comment period on the Chesapeake Bay Virginia National Estuarine Research Reserve Management Plan Revision.

Four sites along the York River comprise the Chesapeake Bay Virginia National Estuarine Research Reserve; Sweet Hall Marsh, Taskinas Creek, the Catlett Islands, and the Goodwin Islands. The fours sites were designated as the Chesapeake Bay Virginia National Estuarine Research Reserve in 1991 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating in partnership with the Virginia Institute of Marine Science under a management plan approved in 1991. Pursuant to 15 CFR section 921.33(c), a state must revise their management plan every five years. The submission of this plan fulfills this requirement and sets a course for successful implementation of the goals and objectives of the reserve. A boundary expansion, a revised geographic vision for the reserve, new facilities, and updated programmatic objectives are notable revisions to the 1991 approved management plan.

The revised management plan outlines the administrative structure; the education, stewardship, and research goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. This management plan describes how the strengths of the reserve will focus on four areas relevant to the Chesapeake Bay: functions and linkages of land-margin ecosystems; ecosystem vulnerability to climate and human-induced stressors; water quality and aquatic stressors; and integrated ocean observing systems.

Since 1991, the reserve has added a coastal training program that delivers science-based information to key decision makers in the Chesapeake Bay; has completed a site profile that characterizes the reserve; and has expanded the monitoring, stewardship and education programs significantly. A new administrative building (2003) and a new science and education lab (2005) have been built to support the growth of reserve programs.

With the approval of this management plan, the Chesapeake Bay Virginia National Estuarine Research Reserve will change their total acreage from 2,849 acres to a new total of 2,705 acres. This change is attributable to boundary modifications at two of the reserve sites. At Sweet Hall Marsh, 189 acres of reserve property are being removed from the reserve boundary due to a change in ownership. At the Taskinas Creek site, 44.5 acres are being added to the reserve

boundary to provide a deciduous and hardwood forest buffer to protect the estuarine areas used for research and education.

The 1991 Management Plan proposed a multi-phased expansion of the reserve that started with the four sites on the York River and planned to incorporate over 20 sites throughout Virginia to ensure adequate representation of Virginian estuarine areas important to the Chesapeake Bay. This expansion has not occurred since 1991. Due to the anticipated logistical, economic, and programmatic difficulties of having over 20 sites administered as part of the National Estuarine Research Reserve, the 2008 Management Plan focuses on the York River for the next five years.

FOR FURTHER INFORMATION CONTACT: Michael Migliori at (301) 563–1126 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910. For copies of the Chesapeake Bay Virginia Management Plan revision, visit *http://web.vims.edu/cbnerr/index.htm.*

Dated: October 29, 2008.

David M. Kennedy,

Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.

[FR Doc. E8–26338 Filed 11–4–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

ACTION: Notice.

SUMMARY: Pursuant to the provisions of 37 CFR 404.4, which implements Public Law 96517, as amended, the Department of the Air Force announces its intention to grant to Tribologix, Inc., an Ohio corporation, having a place of business at 7086 Corporate Way, Suite 101, Dayton, OH 45459, an exclusive or partially exclusive license in any right, title and interest, the Air Force has in the following U.S. provisional patent application:

U.S. Provisional Patent Application no. 61/123,566, entitled *Object with Durably Bonded Lubricant Layer or Other Functional Coating*, Jeffrey S. Zabinski, inventor, filed on 1 April 2008, in the USPTO.

FOR FURTHER INFORMATION: Any objection to the grant of the above license must be submitted in writing within 15 days of the date of publication of this Notice in the **Federal Register**, to be considered.

Written response should be sent to: The Air Force Material Command Law Office, AFMC LO/JAZ, 2240 B. Street, Bldg. 11, Wright-Patterson AFB 45433–7109, attention, Thomas C. Stover. Telephone (937) 255–2838; fax (937) 255–3733.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–26348 Filed 11–4–08; 8:45 am]

BILLING CODE 5001–05–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

Time and Date of Meeting: 9 a.m., December 5, 2008.

Place: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

Status: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

Matters to be Considered: This public hearing and meeting is the fourth in a series concerning the Department of Energy's (DOE) and National Nuclear Security Administration's (NNSA) incorporation of safety into the design and construction of new DOE defense nuclear facilities and into major modification of existing facilities. The Board is responsible, pursuant to its statutory charter, to review and evaluate the content and implementation of standards relating to the design and construction of such facilities. This public hearing and meeting is a continuation of the Board's interest in integrating safety early into the design process. During the Board's initial public hearing on this subject on December 7, 2005, the Board focused on the adequacy of DOE's existing directives related to the design of new facilities. In preparation for that hearing, DOE outlined its expectations for integrating safety into design and established a framework for achieving needed improvements. During the second public hearing on July 19, 2006, the Board further explored integration of safety into design and the progress being made in implementing DOE's safety in design initiatives. During the third public hearing and meeting on March 27, 2007, the Board considered early issue identification, communication of Board issues to DOE, issue management, and early resolution and closure of design related safety issues. The third hearing also addressed the implementation status of DOE Order 413.3, *Program and Project Management for the Acquisition of Capital Assets*, DOE Standard (STD)–1189, *Integration of Safety into the Design Process*, the revision of DOE Manual 413.3–1, and lessons learned with respect to incorporating safety in design at two major Federal projects, the Waste Treatment Plant (WTP) project and the Chemistry and Metallurgy Research Replacement (CMRR) project. This fourth public hearing and meeting will consider implementation of the revised DOE Order 413.3, the related guidance contained in DOE–STD–1189, and commitments made in the July 19, 2007, joint DOE and Board report to Congress titled, *Improving the Identification and Resolution of Safety Issues During the Design and Construction of DOE Defense Nuclear Facilities*, as those commitments relate to early issue identification, communication of Board issues to DOE, issue management, and early resolution and closure of design related safety issues. This hearing and meeting is intended to further assist the Board and DOE in their collective efforts to evaluate any needed improvements in the timeliness of issue resolution. The Board again expects to hear presentations from both DOE and NNSA senior management officials concerning integration of safety into design. The Board may also collect any other information relevant to health or safety of the workers and the public, with respect to safety in design, that may

warrant Board action. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on December 4, 2008, will be scheduled for time slots, beginning at approximately 12 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. hearing and meeting. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Board's Washington, DC office. The Board will hold the record open until January 6, 2009, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: October 31, 2008.

A.J. Eggenberger,

Chairman.

[FR Doc. E8–26512 Filed 11–3–08; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 30, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: New Collection.

Title: School Leadership Program (SLP) Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 22.

Burden Hours: 880.

Abstract: To implement a data collection process for a new annual reporting for Government Performance Results Act (GPRA) purposes for the School Leadership Program. These data are necessary to assess the performance of the SLP grantees in meeting their stated goals and objectives and to report to ED's Budget Service.

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 3875. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–26413 Filed 11–4–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 30, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Documents Associated with the Notice of Terms and Conditions of Purchase of Loans under the Ensuring Continued Access to Student Loans Act of 2008.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit (primary); Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 14,465.

Burden Hours: 25,750.

Abstract: As one of several measures intended to address concerns about the availability of loans under the Federal Family Education Loan (FFEL) Program during the 2008–2009 academic year, the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA), and the Extension of Student Loan Purchase Authority which extended the program through the 2009–2010 academic year, provides the Department of Education (the Department) with temporary authority to purchase student loans from FFEL Program lenders. The documents included in this collection set forth the terms and conditions of the loan purchase program authorized by ECASLA and its extension, and collect the information from lenders that is required by the Department to administer the program.

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 3878. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–26414 Filed 11–4–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 13, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Sharon Mar, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: October 31, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management, Office of Postsecondary Education.

Type of Review: New.

Title: Higher Education Disaster Relief, Pre-Application Information Form.

Abstract: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) provides $15 million in awards to institutions of higher education located in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster under Title IV

of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974. Emergency clearance is requested for the Pre-Application form, which is needed to collect information to determine the size of institutional awards under the Higher Education Disaster Relief program. Congress expects awards to be made within 60 days of the enactment of Public Law 110–329. The law was enacted September 30, 2008. Refer to Status of Appropriations Bills at *http://thomas.loc.gov/home/approp/app09.html.*

Additional Information: The U.S. Department of Education (the Department) requests that OMB grant an emergency clearance by November 13, 2008 for the application package for the FY 2009 Higher Education Disaster Relief program. On September 30, 2008 in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (2009), Congress provided $15 million for awards to institutions of higher education located in areas affected by hurricanes, floods, or other natural disasters occurring during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974. The law provides that the Department make awards within 60 days of enactment, or by November 30, 2008.

The Department intends to follow the same procedures used in FY 2006 and FY 2007 to allocate funds in the Hurricane Education Recovery Awards grant program. The proposed information collection for the 2009 Higher Education Disaster Relief program is nearly identical to that approved in 2006 and 2007, and would include the following quantitative measures:

- Revenue lost as a result of natural disasters;
- Expenses already incurred by the institution in remediation of the effects of 2008 natural disasters;
- Estimated construction costs to repair or replace campus buildings damaged by the natural disaster; and the
- Estimated amount to be reimbursed by insurance or other Federal agency, foundation or charitable outlays for disaster relief.

The Department will publish a separate Draft Closing date notice in the **Federal Register** announcing the application package. A Pre-Application Information Form will be made available for download on the Department's Web site, requesting that applicants e-mail responses to a special Department mailbox (*HEDR@ed.gov*) for processing. Institutional allotments from the $15 million appropriation will be based on these responses. Once notified of their allotments, applicants will submit additional information through Grants.gov using already approved standard forms. Information specific to each registered Grants.gov user, including all postsecondary institutions, is already available in the Grants.gov system.

Frequency: One time.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 75.

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 3896. 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–26415 Filed 11–4–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will collect information on refineries with a crude distillation capacity of 50,000 barrels a day that have been shutdown, had a physical or cyber attack, or had an emergency shutdown of a major unit or process that may significantly reduce its production of transportation and/or heating fuels.

DATES: Comments regarding this collection must be received on or before December 5, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to

Office of Electricity Delivery and Energy Reliability (*Attn:* Comments on Refinery Emergency Disruption and Incident Report), OE–30, Forrestal Building, U.S. Department of Energy, Washington, DC 20585;

or by fax at 202–586–2623, or by e-mail at *Alice.Lippert@hq.doe.gov.* Alternatively, Alice Lippert may be contacted by telephone at 202–586–9600.

FOR FURTHER INFORMATION CONTACT: Requests for information should be directed to Alice Lippert. Revised copies of the survey collection instrument and instructions can be accessed at: *http://www.oe.netl.doe.gov/refdisrupt.aspx.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No.: New;

(2) Information Collection Request Title: Refinery Emergency Disruption and Incident Report;

(3) Type of Request: New collection;

(4) Purpose: The Refinery Emergency Disruption and Incident Report collects information on petroleum refinery incidents and disturbances for DOE's use in fulfilling its overall national security and energy emergency management responsibilities. The information will also be used by DOE for emergency response and analytical purposes. Since the pre-survey consultation notice was published, **Federal Register** notice 73 FR 37451, the proposal for the collection of actions taken by the refinery, units or processes affected, and the estimated production impact (Schedule 2) has been withdrawn. Additionally the reporting requirements for filing the form have changed. Respondents are required to submit the form within one hour between the hours of 7 a.m. and 6 p.m. (local time where incident has occurred)

when at least one of the conditions for filing has been met. Outside of those hours, the form must be submitted within 3 hours of determining at least one of the conditions for filing has been met.

(5) Type of Respondents: All petroleum refineries with a crude distillation capacity of 50,000 barrels a day or greater that are located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam, and other U.S. possessions will be required to supply information when an incident or disturbance meets a reporting threshold.

(6) Estimated Number of Respondents: 100 Respondents—100 refinery operators (number not expected to change over the next three years);

(7) Estimated Number of Burden Hours: OE estimates the annual reporting burden to be 27 hours. OE estimates the respondent burden on the Emergency Report to be about six to ten minutes. OE estimates 200 annual Emergency Report filings.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35), Department of Energy Organization Act (DOE Act), 42 U.S.C. 7101 *et seq.*, Section 13 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275) (15 U.S.C. 772), and Section 11 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (Pub. L. 93–319, 15 U.S.C. 796).

Issued in Washington, DC on October 30, 2008.

Kevin M. Kolevar,

Assistant Secretary of Energy, Office of Electricity Delivery and Energy Reliability, Infrastructure Security and Energy Restoration Division.

[FR Doc. E8–26374 Filed 11–4–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 29, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–139–000.

Applicants: Red Wolf Energy Trading, LLC.

Description: Petition for Acceptance of Initial Rate Schedule re FERC Electric Tariff, Original Volume 1 of Red Wolf Energy Trading, LLC.

Filed Date: 10/28/2008.

Accession Number: 20081029–0066.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–140–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., submits revisions to update the Energy Imbalance Market Offer Cap under ER09–140.

Filed Date: 10/27/2008.

Accession Number: 20081029–0006.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: ER09–141–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits a revised rate sheet to the Service Agreement for Wholesale Distribution Service.

Filed Date: 10/28/2008.

Accession Number: 20081029–0005.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–142–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits amended agreements with the State of California Department of Water Resources.

Filed Date: 10/28/2008.

Accession Number: 20081029–0004.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–143–000.

Applicants: Avista Corporation, North Western Corporation.

Description: Avista Corp *et al.*, submits non-conforming Long-Term Service Agreements.

Filed Date: 10/28/2008.

Accession Number: 20081029–0003.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–144–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc., submits Amendments to its Formulary Rate Tariff for Service to Members.

Filed Date: 10/28/2008.

Accession Number: 20081029–0002.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–145–000.

Applicants: Mountain Wind Power, LLC.

Description: Mountain Wind Power, LLC submits a Shared Facilities Agreement.

Filed Date: 10/28/2008.

Accession Number: 20081029–0001.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–146–000.

Applicants: ISO New England, Inc.

Description: ISO New England, Inc., submits its capital budget for calendar year 2009, etc.

Filed Date: 10/28/2008.

Accession Number: 20081029–0007.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–148–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., proposes to revise portions of its Open Access Transmission Tariff to Incorporate Generation Station Power Supply Schedule, effective 12/27/08.

Filed Date: 10/28/2008.

Accession Number: 20081029–0273.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–149–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc., proposes to revise portions of its Open Access Transmission Tariff to modify Energy Imbalance Service Market, effective 12/27/08.

Filed Date: 10/28/2008.

Accession Number: 20081029–0272.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–150–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc.'s executed Meter Agent Services Agreement with Red Hills Wind Project, LLC as Market Participant and Constellation Energy Control and Dispatch, LLC.

Filed Date: 10/28/2008.

Accession Number: 20081029–0271.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: ER09–151–000.

Applicants: Keystone Energy Group, Inc.

Description: Keystone Energy Group, Inc., requests cancellation of First Revised Sheet 1 to FERC Electric Tariff, Original Volume 1, effective 11/30/08.

Filed Date: 10/29/2008.

Accession Number: 20081029–0270.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–6–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Application for Authorization of the Assumption of Liabilities and the Issuances of Securities Under Section 204 of the Federal Power Act.

Filed Date: 10/27/2008.

Accession Number: 20081027–5121.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: ES09–7–000.
Applicants: Kansas City Power & Light Company.
Description: Kansas City Power & Light Company Application Under Federal Power Act Section 204 to Issue Short-Term Debt.
Filed Date: 10/28/2008.
Accession Number: 20081028–5081.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–118–001; OA08–54–004; OA08–55–004; OA08–56–004; OA08–57–004; OA08–99–002.
Applicants: Idaho Power Company, PacifiCorp, Deseret Generation & Transmission Co-op., Portland General Electric Company, Black Hills Power, Inc., Northwestern Corporation
Description: Order No. 890 Compliance Filing of the Jurisdictional Members of the Northern Tier Transmission Group Planning Agreement (in response to July 13 Order).
Filed Date: 10/29/2008.
Accession Number: 20081029–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: OA08–23–001; OA08–28–002; OA08–31–002; OA08–40–001; OA08–45–002.
Applicants: Idaho Power Company, Deseret Generation & Transmission Co-op., Portland General Electric Company, NorthWestern Corporation, PacifiCorp.
Description: Order No. 890 Attachment K Joint Compliance Filing of the Funding Members of the Northern Tier Transmission Group in OA08–23, *et al.*
Filed Date: 10/29/2008.
Accession Number: 20081029–5084.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26311 Filed 11–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 28, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–5–000.
Applicants: Barton Windpower II LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status—Barton Windpower II LLC under EG09–5.
Filed Date: 10/28/2008
Accession Number: 20081028–5039.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: EG09–6–000.
Applicants: Barton Windpower LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status—Barton Windpower LLC under EG09–6.
Filed Date: 10/28/2008.
Accession Number: 20081028–5040.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: EG09–7–000
Applicants: Elm Creek Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Elm Creek Wind, LLC in EG09–7.
Filed Date: 10/28/2008.
Accession Number: 20081028–5041.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Docket Numbers: EG09–8–000.
Applicants: Farmers City Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status—Farmers City Wind, LLC under EG09–8.
Filed Date: 10/28/2008.
Accession Number: 20081028–5042.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 18, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4345–024; ER98–511–012.
Applicants: OGE Energy Resources, Inc.; Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Co *et al.* submits a Notice of Non-Material Change in Status in compliance with Order 652 and 697.
Filed Date: 10/27/2008.
Accession Number: 20081027–0187.
Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: ER08–831–003.
Applicants: Progress Energy, Inc.
Description: Progress Energy, Inc *et al.* informs that they submitted a compliance filing in the Section 205 filing (Correction) proceeding which concerns various amendments to the Joint Open Access Transmission Tariff of CP&L and FPC.
Filed Date: 10/24/2008.
Accession Number: 20081027–0130.
Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER08–1016–002.
Applicants: PJM Interconnection, L.L.C.
Description: PJM electronically filed an informational filing to the Commission's July 25, 2008 Order directing a further compliance filing, in ER08–1016.
Filed Date: 10/23/2008.
Accession Number: 20081023–5094.

Comment Date: 5 p.m. Eastern Time on Thursday, November 13, 2008.

Docket Numbers: ER08–1460–001.

Applicants: Arizona Public Service Company.

Description: Request of Arizona Public Service Company.

Filed Date: 10/27/2008.

Accession Number: 20081027–5037.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Docket Numbers: ER09–60–001.

Applicants: Public Service Company of New Mexico.

Description: Certificate of Concurrence of Tri-State Generation and Transmission Association, Inc. under ER09–60.

Filed Date: 10/24/2008.

Accession Number: 20081024–5137.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–121–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement with EcoMet Wind, LLC etc.

Filed Date: 10/24/2008.

Accession Number: 20081027–0131.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–122–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a Large Generator Interconnection Agreement among enXco Development Corporation, *et al.*

Filed Date: 10/24/2008.

Accession Number: 20081027–0122.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–123–000

Applicants: Midwest Independent Transmission System

Description: Midwest Independent Transmission System Operator, Inc. submits an executed Small Generator Interconnection Agreement with Grant County Wind, LLC etc.

Filed Date: 10/24/2008.

Accession Number: 20081027–0132.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–124–000.

Applicants: The American Electric Power Service Corp.

Description: AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement 1431 between Village of Wharton and AEP.

Filed Date: 10/24/2008.

Accession Number: 20081027–0123.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–125–000.

Applicants: The American Electric Power Service Corp.

Description: AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement 1416 with Village of Arcadia under ER09–125.

Filed Date: 10/24/2008.

Accession Number: 20081027–0124.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–126–000.

Applicants: The American Electric Power Service Corp.

Description: The American Electric Power Service Corporation submits a second revision to the Interconnection and Local Delivery Service Agreement 1431 between Village of Ohio City and AEP.

Filed Date: 10/24/2008.

Accession Number: 20081027–0125.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–127–000.

Applicants: The American Electric Power Service Corp.

Description: AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement 1426 with Village of Republic.

Filed Date: 10/24/2008.

Accession Number: 20081027–0126.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–128–000.

Applicants: Entergy Services, Inc.

Description: Entergy Arkansas, Inc submits the Thirty-Ninth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between EAI and Arkansas Electric Cooperative Corporation.

Filed Date: 10/24/2008.

Accession Number: 20081027–0127.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–129–000.

Applicants: Entergy Services, Inc.

Description: Entergy Gulf States Louisiana, LLC submits Notice of Termination of First Revised Rate Schedule 164 with the City of Caldwell, Texas.

Filed Date: 10/24/2008.

Accession Number: 20081027–0128.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–130–000.

Applicants: New York State Electric & Gas Corp.

Description: New York State Electric & Gas Corp submits a supplement to Rate Schedule FERC No. 117 Facilities Agreement.

Filed Date: 10/24/2008.

Accession Number: 20081027–0183.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–131–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Meter Agent Services Agreement.

Filed Date: 10/24/2008.

Accession Number: 20081027–0184.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–132–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Large Generator Interconnection Agreement.

Filed Date: 10/24/2008.

Accession Number: 20081027–0185.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008

Docket Numbers: ER09–133–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Co. of Colorado submits a Petition for Approval of Settlement.

Filed Date: 10/24/2008.

Accession Number: 20081027–0188.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–134–000; ER09–135–000; ER09–136–000; ER09–137–000.

Applicants: FirstEnergy Solutions Corp.

Description: FE MBR Sellers submits proposed amendments to Market-Based Rate Tariffs Waiving Affiliate Restrictions in Ohio.

Filed Date: 10/24/2008.

Accession Number: 20081027–0186.

Comment Date: 5 p.m. Eastern Time on Friday, November 14, 2008.

Docket Numbers: ER09–147–000.

Applicants: ISO New England Inc., Long Island Power Authority

Description: Request for Expedited Issuance of a Waiver of ISO New England Inc's Financial Assurance Policy.

Filed Date: 10/28/2008.

Accession Number: 20081028–5038.

Comment Date: 5 p.m. Eastern Time on Thursday, November 6, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–5–000.

Applicants: North Western Corporation.

Description: Northwestern Corporation submits an application

requesting authorization to borrow on a short-term, revolving basis up to a maximum of $200 million in connection with an existing unsecured credit facility.

Filed Date: 10/20/2008.

Accession Number: 20081022–0325.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: ES09–6–000.

Applicants: Wolverine Power Supply Cooperative, Inc.

Description: Application for Authorization of the Assumption of Liabilities and the Issuances of Securities Under Section 204 of the Federal Power Act.

Filed Date: 10/27/2008.

Accession Number: 20081027–5121.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–142–001; ER08–710–001.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits Substitute First Revised Sheet 105 and Substitute Second Revised Sheet 105 to its Open Access Transmission Tariff under ER08–710 *et al.*

Filed Date: 10/27/2008.

Accession Number: 20081027–0129.

Comment Date: 5 p.m. Eastern Time on Monday, November 17, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26312 Filed 11–4–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 30, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–1126–002; ER07–100–002; ER08–1128–002; ER08–1129–002; ER08–1130–002; ER08–1131–002; ER08–1134–002; ER08–1135–002; ER08–1136–002; ER08–1137–002; ER08–1139–002.

Applicants: Georgia-Pacific Brewton LLC; Koch Supply & Trading, LP; Brunswick Cellulose, Inc.; Georgia-Pacific Cedar Springs LLC; Georgia-Pacific Con Ops LLC Port Hudson; Georgia-Pacific Cons Prods LP Naheola; Georgia-Pacific Cons Prods LP Savannah; Georgia-Pacific LLC Crosset; Georgia-Pacific Monticello LLC; Leaf River Cellulose, LLC.

Description: Georgia-Pacific Applicants *et al.* request a one-time waiver of Order No. 697 filing requirement under ER08–1126 *et al.*

Filed Date: 10/22/2008.

Accession Number: 20081028–0141.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 12, 2008.

Docket Numbers: ER09–152–000

Applicants: Pennsylvania Power Company.

Description: Pennsylvania Power Co submits a Notice of Cancellation of the Electric Service Agreement (Rate Schedule 48) dated 8/8/94 with Borough of Wampum, PA under ER09–152.

Filed Date: 10/29/2008.

Accession Number: 20081030–0051.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–153–000.

Applicants: Southern Company Services, Inc.

Description: Alabama Power Co. *et al.* submits materials in support of its request for authorization to use the Companies' updated depreciation rates in the calculation of charges for services provided under ER09–153.

Filed Date: 10/29/2008.

Accession Number: 20081030–0052.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–154–000.

Applicants: Southern Company Services, Inc.

Description: Alabama Power Co. *et al.* submits materials in support of its request for authorization to use updated depreciation rates in the calculation of charges for service provided under ER09–154.

Filed Date: 10/29/2008.

Accession Number: 20081030–0053.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–155–000.

Applicants: Southern Company Services, Inc.

Description: Alabama Power Co. *et al.* submits materials in support of its request for authorization to use updated depreciation rates in the calculation of charges for service provided under ER09–155.

Filed Date: 10/29/2008.

Accession Number: 20081030–0054.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–156–000.

Applicants: Southern Company Services, Inc.

Description: Alabama Power Co. *et al.* submits materials in support of its request for authorization to use updated depreciation rates in the calculation of charges for service provided under ER09–154.

Filed Date: 10/29/2008.

Accession Number: 20081030–0055.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–157–000.

Applicants: The American Electric Power Service Corp.

Description: AEP Operating Companies submits a third revision to

the Interconnection and Local Delivery Service Agreement under ER09–157.

Filed Date: 10/29/2008.

Accession Number: 20081030–0056.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Docket Numbers: ER09–158–000.

Applicants: Allegheny Power.

Description: Allegheny Power submits Attachment H–11A to Open Access Transmission Tariff of PJM Interconnection, LLC, FERC Electric Tariff, Sixth Revised Volume 1 under ER09–158.

Filed Date: 10/29/2008.

Accession Number: 20081030–0057.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 19, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–62–000; ES08–63–000; ES08–64–000.

Applicants: PSEG Fossil LLC; PSEG Nuclear LLC; PSEG Energy Resources & Trade LLC.

Description: PSEG Power Companies Supplemental Filing to the September 11, 2008 Application for Renewal and Expansion of Authorization to Issue Securities in Connection with Credit Facilities under ES08–62, *et al.*

Filed Date: 10/30/2008.

Accession Number: 20081030–5072.

Comment Date: 5 p.m. Eastern Time on Monday, November 10, 2008.

Docket Numbers: ES09–9–000.

Applicants: Potomac Edison Company.

Description: Potomac Edison Company Application Under Section 204 to Issue Short-Term Debt Securities in ES09–9.

Filed Date: 10/30/2008.

Accession Number: 20081030–5102.

Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–26376 Filed 11–4–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0473; FRL–8371–1]

Agency Information Collection Activities; Proposed Renewal and Consolidation of Several Currently Approved Collections; Comment Request; Pesticide Program Public Sector Collections; EPA ICR No. 2311.01, OMB Control No. 2070–new

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew and consolidate several existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the consolidated ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of this information collection. The consolidated ICR, entitled: ''Pesticide Program Public Sector Collections'' and identified by EPA ICR No. 2311.01 and OMB Control No. 2070–new, will consolidate the following currently approved ICRs: ''Applications and Summary Report for Emergency Exemption for Pesticides'' (EPA ICR No. 0596.09, OMB Control No. 2070–0032) and ''Notice of Pesticide Registration by States to Meet a Special Local Need under FIFRA Section 24(c)'' (EPA ICR No. 0595.09, OMB Control No. 2070–0055).

DATES: Comments must be received on or before January 5, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0473, by one of the following methods:

- *Federal Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0473. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and

included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Cameo G. Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it 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 estimates 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.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Do I Need to Know About PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

PRA defines *burden* to mean 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.

IV. What ICR Does this Request Apply to?

Title: Pesticide Program Public Sector Collections.

ICR numbers: EPA ICR No. 2311.01, OMB Control No. 2070–new.

ICR status: This ICR reflects the consolidation of the following currently approved ICRs: ''Applications and Summary Report for Emergency Exemption for Pesticides'' (EPA ICR No. 0596.09, OMB Control No. 2070–0032; was scheduled to expire on January 28, 2008 and a renewal ICR is at OMB awaiting approval) and ''Notice of Pesticide Registration by States to Meet a Special Local Need under FIFRA Section 24(c)'' (EPA ICR No. 0595.09, OMB Control No. 2070–0055; scheduled to expire on August 31, 2009).

Affected entities: Entities potentially affected by this ICR are pesticide registrants, which may be identified by pesticide and other agricultural chemical manufacturing (North American Industrial Classification System (NAICS) code 325320) and governments that administer environmental quality programs (NAICS code 9241).

Abstract: This proposed consolidated information collection reports the paperwork burden hours and costs for State actions initiated under either section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or section 24(c). Section 18 of FIFRA authorizes EPA to grant emergency exemptions to states and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. A section 18 action arises when growers and others encounter a pest problem on a site for which there is either no registered pesticide available, or for which there is a registered pesticide that would be effective but is not yet approved for use on that particular site. Section 18 also allows EPA to grant unregistered pesticide use exemptions for public health and

quarantine reasons. FIFRA section 24(c) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need (SLN). A State-issued registration under FIFRA section 24(c) is deemed a federal registration for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any action it takes, i.e., when it issues, amends, or revokes a State registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 49,500 hours annually for state government ''applicants'' for the FIFRA section 18 program and for applicants under the FIFRA section 24(c) an annual estimate of 23,400 hours, a combined total of 72,900 burden hours annually. The consolidated ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 950.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 72,900 hours.

Estimated total annual costs: $4,599,290. This ICR does not involve any capital investiment or maintenance and operational costs.

V. Are There Changes in the Estimates from the Last Approvals?

The consolidation of these ICRs will not result in a change of the 72,900 hours in the total estimated combined respondent burden that is currently approved by OMB.

VI. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the consolidated ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity for the public to submit additional comments for OMB consideration.

If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 27, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–26266 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0884; FRL–8388–6]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0884. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. EUP

EPA has issued the following EUP:

264–EUP–143. Issuance. Bayer CropScience LP, 2 T.W. Alexander Dr. Research Triangle Park, NC 27709. This EUP allows the use of the plant incorporated protectants *Bacillus thuringiensis* (Bt) Cry 1Ab and Bt Cry2Ae (insecticides) on 1,919 acres of cotton. The active ingredients are described on the permit labels and summarized as follows:

- 0.02022 pound (9.18 gram) of Bt Cry2Ae active ingredient in cotton events GHB119 and cotton event GHB714.
- 0.05883 pound (26.709 gram) of Bt Cry1Ab x Bt Cry2Ae (Twinlink) active ingredient in hybrids of cotton events T303–3 and T304–40 Bt Cry 1Ab with cotton events GHB 119 and GHB714 Bt Cry2Ae.

This EUP is intended to evaluate the control of Cotton bollworm (*Helicoverpa zea*), tobacco budworm (*Heliothis virescens*), pink bollworm (*Pectinophora gossypiella*), fall armyworm (*Spodoptera frugiperda*), and beet armyworm (*Spodoptera exigua*). The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and the United States Territory of Puerto Rico. The EUP is effective from September 1, 2008 to December 31, 2010.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 24, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–26149 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8738–2]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); NO_X & SO_X Secondary NAAQS Review Panel Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee Oxides of Nitrogen (NO_X) and Sulfur Oxides (SO_X) Secondary National Ambient Air Quality Standards (NAAQS) Review Panel (CASAC Panel) to consider and discuss the Panel's working-draft report regarding its peer review of EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft (EPA–452/P–08–005a)*.

DATES: The public teleconference will be held on Wednesday, November 19, 2008 from 1 p.m. to 4 p.m. (Eastern Time).

LOCATION: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the teleconference meeting may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9868; fax (202) 233–0643; or e-mail at *barry.kyndall@epa.gov*. General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac*.

SUPPLEMENTARY INFORMATION:

Background: The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including NO_X and SO_X. EPA is in the process of reviewing the secondary NAAQS for NO_X and SO_X. Welfare effects as defined in the CAA includes, but is not limited to, effects on soils, water, wildlife, vegetation, visibility, weather, and climate, as well as effects on materials, economic values, and personal comfort and well-being. As part of that process, EPA's Office of Air and Radiation (OAR) completed the *Risk and Exposure Assessment (REA) for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft (EPA–452/P–08–005a)* in September 2008. The CASAC held a public meeting on October 1–2, 2008 to conduct a peer review of EPA's first draft REA.

The purpose of the November 19, 2008 meeting is for the CASAC Panel to discuss its working-draft report on the review of the first draft REA.

Technical Contacts: Any questions concerning EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft* should be directed to Dr. Anne Rea, OAR, at (919) 541–0053 or *rea.anne@epa.gov*.

Availability of Meeting Materials: EPA's *Risk and Exposure Assessment for Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur: First Draft* can be accessed at *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_rea.html*. The Panel's draft report and agenda for the teleconference will be posted in advance of the meeting on the SAB Web site at *http://www.epa.gov/casac*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the November 19, 2008 meeting, interested parties should notify Ms. Kyndall Barry, DFO, by e-mail no later than November 14, 2008. Individuals making oral statements will be limited to three minutes per speaker. *Written Statements:* Written statements for the November 19, 2008 meeting should be received in the SAB Staff Office by November 14, 2008, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Barry at the phone number or e-mail address noted above, preferably at least ten days prior to the face-to-face meeting, to give EPA as much time as possible to process your request.

Dated: October 30, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–26397 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8385–1]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities

DATES: Comments must be received on or before December 5, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

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

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each pesticide petition summary and may be contacted by telephone or e-mail. The mailing address for each contact person listed is: Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 8E7367*. (EPA–HQ–OPP–2008–0624). BASF Corporation Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the fungicide, Boscalid (BAS 510F); 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl), in or on coffee, green bean at 0.05 parts per million (ppm). In plants, the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by gas chromatography with electron capture detection. Contact: Bryant Crowe, (703) 305–0025, *crowe.bryant@epa.gov*.

2. *PP 7F7221*. (EPA–HQ–OPP–2007-0514). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to establish a tolerance for residues of the fungicide metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of cis- and trans-isomers, in or on corn, field, aspirated grain fractions at 0.05 ppm; corn, field, forage at 3.5 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 4.5 ppm; corn, pop, grain at 0.02 ppm; corn, pop, stover at 4.5 ppm; corn, sweet, forage at 3.5 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 4.5 ppm; cotton, undelinted seed at 0.25 ppm; cotton, gin byproducts at 8.0 ppm. Independently validated analytical method have been submitted for analyzing parent metconazole residues with appropriate sensitivity in all the crop and processed commodities for corn and cotton for which tolerances are being requested. Contact: Tracy Keigwin, (703) 305–6605, *keigwin.tracy@epa.gov*.

3. *PP 7F7292*. (EPA–HQ–OPP–2008–0718). Valent U.S.A. Company, 1600 Riviera Ave., Suite 200, Walnut Creek, CA 94596-8025, proposes to establish a tolerance for residues of the fungicide, metconazole, 5-[(4-chlorophenyl)-methyl]-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol, measured as the sum of cis- and trans-isomers, in or on canola seed at 0.04 ppm. Independently validated analytical methods have been submitted for analyzing parent metconazole residues with appropriate sensitivity for all canola crop and processed commodities for which a tolerance is being requested. Contact: Tracy Keigwin, (703) 305–6605, *keigwin.tracy@epa.gov*.

4. *PP 8F7338*. (EPA–HQ–OPP–2008–0262). Bayer CropScience, P.O. Box 12014, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the insecticide spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl ester, and its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, calculated as parent compound equivalents, in or on corn, pop grain at 0.02 ppm and corn, pop, stover at 1.5 ppm. Adequate analytical methodology using liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) detection is available for enforcement purposes. Contact: John Hebert, (703) 308–6249, *hebert.john@epa.gov*.

5. *PP 8F7398*. (EPA–HQ–OPP–2008–0262). Bayer CropScience, P.O. Box 12014, 2 T. W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance for the indirect or inadvertent residues of the insecticide, spiromesifen; butanoic acid, 3,3-dimethyl-, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4] non-3-en-4-yl ester, its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro [4.4]non-3-en-2-one and its metabolites containing the 4-hydroxymethyl moiety (i.e.4-hydroxy-3-[4-(hydroxymethyl)-2,6-dimethylphenyl]-1-oxaspiro[4.4]non -3-en-2-one and its conjugates), calculated as parent compound equivalents, when present therein as a result of the application of the pesticide in or on vegetable, bulb, group 3 to growing crops at 0.07 ppm. Adequate analytical methodology using LC/MS/MS detection is available for enforcement purposes. Contact: Amer Al-Mudalla, (703) 605–0566, *al-mudalla.amer@epa.gov*.

Amendment to Existing Tolerance

1. *PP 8E7366*. (EPA–HQ–OPP–2008–0624). BASF Corporation Research Triangle Park, NC 27709, proposes to increase the established tolerance in 40 CFR 180.589 for residues of the fungicide, boscalid (BAS 510F); 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro(1,1'-biphenyl)-2-yl), in or on banana, import from 0.2 ppm to 0.5 ppm. In plants, the parent residue is extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and a column clean up. Quantitation is by gas chromatography using mass spectrometry (GC/MS). In livestock the residues are extracted with methanol. The extract is treated with enzymes in order to release the conjugated glucuronic acid metabolite. The residues are then isolated by liquid/liquid partition followed by column chromatography. The hydroxylated metabolite is acetylated followed by a column clean-up. The parent and acetylated metabolite are quantitated by gas chromatography with electron capture detection. Contact: Bryant Crowe, (703) 305–0025, *crowe.bryant@epa.gov*.

2. *PP 8F7388*. (EPA–HQ–OPP–2008–0688). Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268, proposes to decrease the established tolerances in 40 CFR 180.635 for residues of the insecticide, spinetoram, expressed as a combination of XDE-175-J: 1-H-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl)oxy] -13-[[(2R,5S,6R)-5-(dimethylamino)tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl - 2,3,3a,4,5,5a,5b,6,9,10,11,12,13,14,16a, 16b-hexadecahydro 14-methyl-, (2R,3aR,5aR,5bS,9S,13S, 14R,16aS,16bR); XDE-175-L: 1H-as-indaceno[3,2-d]oxacy clododecin-7,15-dione, 2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-a-L-mannopyranosyl) oxy]-13-[[(2R,5S,6R) -5- (dimethylamino) tetrahydro- 6-methyl-2H-pyran-2-yl]oxy]-9-ethyl- 2,3,3a,5a,5b,6,9,10,11, 12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-, (2S,3aR,5aS,5bS,9S,13S, 14R,16aS,16bS); ND-J:(2R, 3aR,5aR,5bS,9S,13S, 14R,16aS,16bR) -9-ethyl-14-methyl-13- [[(2S,5S,6R)-6-methyl- 5-(methylamino) tetrahydro-2H-pyran-2-yl]oxy]-7, 15-dioxo-

2,3,3a,4,5,5a,5b, 6,7,9,10,11, 12,13,14,15, 16a,16b-octadecahydro-1H-as-indaceno[3,2-d] oxacyclododecin-2-yl 6-deoxy- 3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranoside; and NF-J: (2R,3S,6S)-6- ([(2R, 3aR,5aR,5bS,9S,13S,14R, 16aS, 16bR)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-alpha-L-mannopyranosyl) oxy]-9-ethyl-14-methyl- 7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9, 10,11,12,13,14,15,16a,16b-octadecahydro-1H-as-indaceno [3,2-d]oxacyclododecin-13-yl]oxy) -2-methyltetrahydro-2H-pyran-3-yl(methyl)formamide, in or on nut trees, group 14 and pistachios from 0.4 ppm to 0.02 ppm and increase the established tolerances for almond, hulls from 2.0 ppm to 3.5 ppm. Per the **Federal Register** of October 10, 2007 (72 FR 57492) (FRL–8149–9), EPA has determined adequate analytical methods are available for enforcement purposes for spinetoram in plant and animal matrices. The independent laboratory validation data were acceptable. Specific to the determination of residues for tree nuts, spinetoram and its metabolites were determined using liquid chromatography with positive-ion atmospheric pressure chemical ionization tandem mass spectrometry (LC/MS/MS) using the method GRM 05.04. The limit of detection (LOD) and limit of quantitation (LOQ) in almonds and pecans were 0.003 g/g and 0.01 g/g, respectively. Contact: Carmen Rodia, (703) 306–0327, *rodia.carmen@epa.gov*.

New Exemptions from an Inert Tolerance

1. *PP 8E7377*. (EPA–HQ–OPP–2008–0618). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.960 for residues of the 2-propenoic acid, 2-hydroxyethyl ester, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxypoly(oxy-1,2-ethanediyl)(CAS No. 1007234–89–0) when used as a pesticide inert ingredient as a dispersant in pesticide formulations without limitation. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

2. *PP 8E7378*. (EPA–HQ–OPP–2008–0619). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.960 for residues of the 2-propenoic acid, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxypoly(oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt (CAS No. 251479–97–7) when used as a pesticide inert ingredient as a dispersant in pesticide formulations without limitation. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

3. *PP 8E7379*. (EPA–HQ–OPP–2008–0620). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.960 for residues of the 2-propenoic acid, monoester with 1,2-propanediol, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxypoly(oxy-1,2-ethanediyl) and 2,5-furandione (CAS No. 955015–23–3) when used as a pesticide inert ingredient as a dispersant in pesticide formulations without limitation. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

4. *PP 8E7380*. (EPA–HQ–OPP–2008–0621). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.960 for residues of the 2-propenoic acid, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxypoly(oxy-1,2-ethanediyl), sodium salt (CAS No. 250591–84–5) when used as a pesticide inert ingredient as a dispersant in pesticide formulations without limitation. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

5. *PP 8E7381*. (EPA–HQ–OPP–2008–0617). BASF Corporation, 100 Campus Dr., Florham Park, NJ 07932, proposes to establish an exemption from the requirement of a tolerance in 40 CFR 180.960 for residues of the 2-propenoic acid, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxypoly(oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt (CAS No. 518026–64–7) when used as a pesticide inert ingredient as a dispersant in pesticide formulations without limitation. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, (703) 347–8825, *samek.karen@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 20, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–26265 Filed 11–4–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site *(http://www.fmc.gov)* or contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201196–001.

Title: Los Angeles and Long Beach Marine Terminal Agreement.

Parties: City of Los Angeles and City of Long Beach.

Filing Party: Matthew J. Thomas, Esq.; Troutman Sanders LLP; 401 9th Street, NW., Suite 1000; Washington, DC 20004.

Synopsis: The amendment adds a definition for ''Early Replacement Drayage Trucks'' and amends the definition of ''Program Funds,'' simplifies the wording regarding the installation of RFID or OCR readers, extends the deadline for access for pre-1989 model year drayage trucks that are registered as being replaced by Early Replacement Drayage Trucks, clarifies the size of containers subject to clean truck fee, adds an exception for defense cargo, and clarifies that the Ports may assess more than one type of concession fee.

By Order of the Federal Maritime Commission.

Dated: October 31, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–26399 Filed 11–4–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

BJ's Cargo Express, Corp, 4470 Broadway, New York, NY 10040, *Officer:* Benjamin Jimenez, Director, (Qualifying Individual).

Sun Ocean Logistics Corp, 5250 W. Century Blvd., Los Angeles, CA 90045, *Officer:* Christine Y. Lee, President, (Qualifying Individual).

Fama Shipping, Inc., 1969 Amsterdam Ave., New York, NY 10032, *Officer:* Jose N. Guillen, Vice President, (Qualifying Individual).

Ireh Logistic Services Inc., 488 E. Ocean Blvd., Long Beach, CA 90802, *Officer:* Sunny Kano, CEO, (Qualifying Individual).

LLK Logistics USA, Inc., 175–18 147 Avenue, Jamaica, NY 11434, *Officers:* Ozen Nerkis, Secretary, (Qualifying Individual), Metin Nerkis, President.

OK To Ship, Inc., 917 Hutchinson Ct., Brooklyn, NY 11223, *Officer:* Choua Mandil, President, (Qualifying Individual).

Nakamura Air Express (U.S.A.) Inc., dba Max (USA) Inc., 5343 W. Imperial Hwy., #100, Los Angeles, CA 90045, *Officer:* Shiro Kobayashi, Operating Officer, (Qualifying Individual).

Konoike Transport and Engineering (USA), Inc., 1420 Coil Avenue, Wilmington, CA 90744, *Officer:* Yutaka Urabe, President, (Qualifying Individual).

DB Shipping (USA) Inc., 148–36 Guy R. Brewer Blvd., Ste. 207, Jamaica, NY 11434, *Officer:* Liuaka Gerry Hong, Secretary, (Qualifying Individual).

Port Alliance Logistics Inc., 70 East Sunrise Highway, Ste. 607, Valley Stream, NY 11581, *Officers:* Shawn Mak, Treasurer, (Qualifying Individual), Huang Yu Lin, President.

Heneways U.S.A. Inc., 1400 Mittel Blvd., Wood Dale, IL 60191, *Officer:* Harold Leboyer, Vice President, (Qualifying Individual).

Titan Container Line Inc., 211 E. 43rd Street, #401, New York, NY 10017, *Officer:* Laurence Cohen, President, (Qualifying Individual).

A B Plant Shipping USA LLC, 15710 JFK Boulevard, Houston, TX 77032, *Officers:* Margaret J. Zimmer, V.P. Administration, (Qualifying Individual), Nancy C. Labrozzi, Secretary.

City Ocean International, Inc., 17890 Castleton Street, Ste. #205, City of Industry, CA 91748, *Officer:* Hui Hiuang, CEO, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Call Rapido, LLC, 9614 Pondwood Road, Boca Raton, FL 33428, *Officers:* Suramya T. Atapattu, Member, (Qualifying Individual).

UKO Logis Inc., 879 W. 190th Street, #290, Gardena, CA 90248, *Officer:* Jae Kim, CFO, (Qualifying Individual).

Total Transport Services Inc., 145 Hook Creek Blvd., Bldg. B6B, Valley Stream, NY 11581, *Officer:* Lawrence McCaffrey, Treasurer, (Qualifying Individual).

Atlantic Global LLC, 1250 Newark Turnpike, Kearny, NJ 07032, *Officer:* Jeff Lelchuk, Managing Member, (Qualifying Individual).

Cargo Control Inc., 210 N. Viginia Avenue, Massapequa, NY 11758, *Officer:* Anthony Paolino, Vice President, (Qualifying Individual).

K & M Shipping, Inc., 1237 S. Euclid Street, Anaheim, CA 92802, *Officer:* Murhaf Abobaker, President, (Qualifying Individual).

AKM International, LLC, 301 Varick Street, Jersey City, NJ 07302, *Officer:* Chun C. Lin, Member Manager, (Qualifying Individual).

Alps Logistics (USA), Inc., 1845 West 205th Street, Torrance, CA 90501, *Officers:* Katsuyuki Hosono, V. Pres. Sales & Opera, (Qualifying Individual), Hideo Yokoyama, President.

Sunship International Acquisitions Incorporated, 6815 W. 95th Street, Ste. #1, Oaklawn, IL 60453, *Officer:* Ylli Karagica, Vice President, (Qualifying Individual).

EPS Logistics, LLC dba EPS Freight Forwarding, 8258 NW 14th Street, Doral, FL 33126, *Officer:* Linda Amador, V.P. of Logistics, (Qualifying Individual).

Ridgeway International (USA) Inc., 1080 Military Turnpike, Plattsburgh, NY 12901, *Officer:* Shaun Gillilland, Director, (Qualifying Individual).

President Marine Inc., 1522 S. Loop West, Houston, TX 77054, *Officers:* Mujahed H. Odeh, Owner, (Qualifying Individual), Brenda D. Heye, Secretary.

ACME Freight Services Corp., 550 E. Carson Plaza Drive, Carson, CA 90748, *Officer:* Shia-Shung Shih, President, (Qualifying Individual).

Ocean Star Logistics Inc., 200 South Garfield Ave., Ste. 108, Alhambra, CA 91801, *Officer:* Janet Li, President, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Planair USA Inc., 5 E. Glenolden Avenue, Glenolden, PA 19036, *Officers:* Akbari Liloma, Secretary, (Qualifying Individual), Chieke E. Ihejirika, President.

A.H. Carter & Associates, Inc., 25802 74th Avenue S., Kent, WA 98032, *Officer:* Kent W. Biden, Dir. Int'l. Operations, (Qualifying Individual).

Taggert International, Ltd., 1792 Red Oak Ct., Liberty, MO 64068, *Officers:* Sean K. Scarbrough, President, (Qualifying Individual), Elizabeth L. Scarbrough, Vice President.

Airpax, Inc. dba Airpax, 334 Ella Grasso Turnpike, Ste. 270, Windsor Locks, CT 06096, *Officers:* Joseph Rizzari, President, (Qualifying Individual), Daniela F. Rizzari, Secretary.

Merco Air & Ocean Cargo, Inc., 6 Fir Way, Cooper City, FL 33026, *Officer:* Sylvia R. Hummel, President, (Qualifying Individual).

Scanwell Logistics (LAX) Inc., 615 N. Nash Street, #202, El Segundo, CA 90245, *Officer:* Gino Lin, President, (Qualifying Individual).

Scanwell Logistics (CHI) Inc., 2455 Arthur Avenue, Elk Grove Village, IL 60007, *Officer:* Gino Lin, President, (Qualifying Individual).

Scanwell Logistics (NYC) Inc., 1995 Linden Blvd., Elmont, NY 11003, *Officer:* Gino Lin, President, (Qualifying Individual).

Agility Logistics Corp., 1251 E. Dyer Road, Ste. 200, Santa Ana, CA 92705, *Officer:* Robert J. Mockoviak, Sen. V. President, (Qualifying Individual).

Matt-Alex, Inc. dba Advanced International Services, 15112 Lee Road, #405, Humble, TX 77396, *Officer:* Thomas M. Gillespie, Vice President, (Qualifying Individual).

Dated: October 31, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–26401 Filed 11–4–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Correction

In the **Federal Register** Notice published October 8, 2008 (73 FR 58965) the reference to Tridant Logistics International Inc. is corrected to read:

''Trident Logistics International Inc.''

Dated: October 31, 2008.

Karen V. Gregory,

Secretary.

[FR Doc. E8–26400 Filed 11–4–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 20, 2008.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. David O. Rogers, Jr. and Dora Rogers of Edinburg, Texas, Saul and Kellye Ortega of Edinburg, Texas, and Arturo and Sonja Ortega of Weslaco, Texas; to acquire voting shares of MNB Ventures, Inc., Mercedes, Texas, and thereby indirectly acquire control of Texas National Bank, Mercedes, Texas.

Board of Governors of the Federal Reserve System, October 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26378 Filed 11–04–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2008.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. The PNC Financial Service Group, Inc., Pittsburgh, Pennsylvania; to merge with National City Corporation, and thereby indirectly acquire National City Bank, both of Cleveland, Ohio.

In connection with this proposal, Applicant also has applied to acquire 19.9 percent of National City Corporation.

Board of Governors of the Federal Reserve System, October 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–26379Filed 11–04–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. White River Capital, Inc. Indianapolis, Indiana; to acquire 100 percent of the voting shares of Union Acceptance Company, LLC, Indianapolis, Indiana, and Coastal Credit, LLC, Virginia Beach, Virginia in pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–26380 Filed 11–04–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to conduct consumer survey research to advance its understanding of the experiences of consumers who interact with consumer reporting agencies (''CRAs'') following an incident of identity theft. The results of this research will inform and guide the Commission's future enforcement and education efforts. This is the second of two notices required under the Paperwork Reduction Act (''PRA''), and the Commission seeks additional public comments on its proposed consumer research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be filed by December 5, 2008.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Consumer Experiences with CRAs Research: FTC File No. P065405'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding — including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-factasurvey*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink : (*https://secure.commentworks.com/ftc-factasurvey*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the reference ''Consumer Experiences with CRAs Research: FTC File No. P065405'' both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Pavneet Singh or Anthony Rodriguez, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Mail Stop NJ–3158, Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

On July 1, 2008, the Commission sought public comments concerning the proposed collection of information. *See* 73 FR 37457. The Commission received a total of six comments, five from consumers and one from the Consumer Data Industry Association (''CDIA'').

Three of the consumer comments reflected their experiences as victims of identity theft and two of the consumer comments contained general statements regarding CRAs.

CDIA's comments acknowledged that surveying consumers is helpful, but raised concerns regarding the scope and methodology of the proposed research. Regarding the scope of the survey, CDIA stated that the FTC should also survey consumer experiences when exercising other Fair and Accurate Credit Transactions Act (''FACT ACT'') rights and not limit the survey to rights associated with CRAs. To better address the purposes of this survey, however, the FTC will focus on those rights associated with CRAs. Although a broader scope may be desirable for further study or enforcement, the FTC believes that quality of responses will be improved by focusing on a related group of rights.

CDIA also raised concerns that the research relies too much on consumer recollections that may erode over time, and that the research will measure

consumer perceptions versus actual experiences. Although consumer recollection may be imperfect, its invocation is a common and accepted practice in survey research. Moreover, the FTC is surveying consumers about their relatively recent experiences when exercising their FACT Act rights. Their recollections should be relatively fresh, and the FTC believes it is appropriate to rely on them in this consumer research.

CDIA further asserted that the FTC's reliance on consumers who have reported data to the FTC's ID theft clearinghouse will skew the results because such consumers will not be representative of the general population. The FTC believes that reliance on consumers who have previously communicated with the agency is the only economically feasible means to generate a sample of identity theft victims and to gather information. The 2006 FTC Identity Theft Survey found that 3.7% of Americans had been victims of identity theft in the previous year. In order for a survey of the general population to reliably contact 4,000 identity theft victims,[2] over 100,000 consumers would have to be surveyed. The cost of such a large survey would be prohibitive. Sending the survey only to consumers who have reported data to the FTC's ID theft clearinghouse allows the FTC to reach the same number of identity theft victims for a fraction of the cost.

The FTC acknowledges that the survey will not be representative of the general population, and will not attempt to project its results beyond consumers who have reported to the FTC. Instead, the Commission will use the survey to examine the kinds of problems, if any, that such consumers experience while exercising their FACTA rights. The FTC thus intends to utilize a survey sample from consumers who have previously communicated with the agency and not incur the cost and burden of finding a sample from the general population.

Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the Commission is providing this second opportunity for public comment while seeking OMB clearance for the survey. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 5, 2008.

1. Description of the collection of information and proposed use

The Fair Credit Reporting Act (''FCRA'') provides identity theft victims with certain rights, such as the ability to place fraud alerts on their credit files, designed to assist them in avoiding or mitigating the harms they suffer as a result of the crime.

The Commission intends to use consumer survey research to advance its understanding of the experiences of identity theft victims who interact with CRAs and who seek to avail themselves of their FCRA remedies. The consumer research will include focus group interviews of 30 consumers, to be followed by a pretesting phase consisting of phone interviews of another 30 consumers, and then mail surveys sent to individual consumers. The Commission seeks information from consumers who have been victims of identity theft and who have contacted one or more of the three nationwide CRAs for assistance. The information from consumers will be collected on a voluntary basis and will be kept anonymous. The FTC staff will identify consumers to be contacted for each phase of the research from a random selection of consumers who have communicated with the FTC's Identity Theft Data Clearinghouse database between January 1, 2008 and May 30, 2008. Staff is seeking approximately 1,000 returned surveys because that input would enable it to project the results from the sample to the population from which the sample was drawn with a maximum error rate of 3%. Assuming a response rate of about 25%–30%, this would require staff to mail the survey to approximately 3,000–4,000 individuals.

Questions to identity theft victims in the research will address several topics, including but not limited to: their experiences when they contacted one or more CRAs and whether they received the required notice of rights from CRAs; their access to free credit reports; and their ability to place fraud alerts on their files, dispute inaccurate information, and block information due to identity theft. The results of the focus groups and mail surveys will assist the Commission in assessing the experiences of identity theft victims when they interact with CRAs. This assessment will help to inform and guide the FTC's future efforts to enforce provisions of the FCRA and to educate consumers and the consumer reporting industry of their rights and obligations under the FCRA.

2. Estimated hours burden

Absent public comments on the FTC's previously stated burden analysis, the FTC is retaining and restating here for further comment its prior burden estimates. The FTC staff proposes to interview 30 consumers divided into three separate focus groups of 10 persons each, and estimates that each consumer will spend approximately one hour to participate. Thus, the estimated total burden imposed by the focus groups will be approximately 30 hours. Staff estimates that respondents to the mail survey will require, on average, approximately 8 minutes to answer the survey (based on anticipated variations among consumers when they interacted with CRAs). Staff will pretest the survey through phone interviews of approximately 30 respondents to ensure that all questions are easily understood. The pretest will total approximately 4 hours cumulatively (30 respondents x 8 minutes each). For the full survey, the staff intends to mail 3,000–4,000 surveys and anticipates receiving a response rate as high as 30% of the consumer recipients (i.e., 900–1,200 responses). Assuming 1,200 consumers respond to the survey, staff further estimates the final survey will require approximately 160 hours to complete (1,200 respondents × 8 minutes each). Thus, cumulative burden hours for the clearance would total 194 hours.

3. Estimated cost burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

William Blumenthal,

General Counsel.

[FR Doc. E8–26405 Filed 11–4–08: 8:45 am]

BILLING CODE 6750–01–S

[2] As explained further in the ensuing discussion of the proposed collection of information, staff anticipates mailing the survey to approximately 3,000 to 4,000 individuals.

FEDERAL TRADE COMMISSION

Consumer Benefits and Harms: Distinguishing Resale Price Maintenance that Benefits Consumers From Resale Price Maintenance that Harms Consumers; Public Workshops; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice of Public Workshops and Opportunity for Comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will hold a series of public Workshop sessions at one or more locations to explore how best to distinguish between uses of resale price maintenance (RPM)[1]

[1] RPM is typically an agreement between a manufacturer and retailer setting the prices at which the retailer will resell the manufacturer's goods to consumers. If the agreement requires the retailer to sell only at or above the price established by the manufacturer, it is said to be minimum RPM. Conversely, if the agreement requires the retailer to sell only at or below the price directed by the

that benefit consumers and those that do not, for purposes of enforcing Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (hereinafter ''Sections 1 and 5''). Among other things, the Workshops will examine when and whether particular market facts or conditions make it more or less likely that the use of RPM will be procompetitive or neutral, and when or whether RPM may harm competition and consumers.

The FTC expects to focus on legal doctrines and jurisprudence, economic research (both theoretical and empirical), as well as business and consumer experiences. The FTC is soliciting public comment from lawyers, economists, marketing professionals, the business community, consumers groups, law enforcement officials, academics (including business and economic historians), and all other interested persons on three general subjects:

(1) The legal, economic, and management principles relevant to the application of Sections 1 and 5 to RPM, including the administrability of current or potential antitrust or other rules for the application of these laws;

(2) The business circumstances regarding the use of RPM that the FTC should examine in the upcoming Workshops, including examples of actual conduct; and

(3) Empirical economic studies or analyses that might provide better guidance and assistance to the business and legal communities regarding RPM enforcement issues.

With respect to the request for examples of real-world conduct, the FTC is soliciting discussions of the business reasons for, and the actual or likely competitive effects of, the use of RPM, including actual or likely efficiencies, as well as the theoretical underpinnings for whether the conduct had or has pro- or anticompetitive effects. When each individual Workshop session is announced, the FTC will solicit additional submissions regarding the topics to be covered at that particular session.

The FTC encourages submissions from businesses or business consultants from a variety of unregulated and regulated markets, recognizing that market participants can offer unique insights into how RPM affects competition, and that the effects of RPM may differ depending on industry context and market structure. The FTC seeks this practical input to provide a real-world foundation of knowledge upon which to draw as the Workshops progress. Respondents are encouraged to respond on the basis of their actual experiences.

The goal of these Workshops is to promote dialogue, learning, and consensus building among all interested parties with respect to the analysis of RPM under Sections 1 and 5, both for purposes of law enforcement and to provide practical guidance to businesses with respect to antitrust compliance. The FTC plans to hold four to six half-day Workshop sessions between January and March 2009. The FTC plans to publish a more detailed description of the topics to be discussed before each session and to solicit additional submissions about each topic. The sessions will be transcribed and placed on the public record. Any written comments received also will be placed on the public record. After the conclusion of the Workshops, the Commission may prepare a public report that incorporates the findings of the Workshops, as well as a description of other research that might be undertaken by the Commission or others.

DATES: Any interested person may submit written comments responsive to any of the topics addressed in this **Federal Register Notice**. Respondents are encouraged to provide comments and requests to participate in the workshops as soon as possible, but in any event no later than the final Workshop session. However, to assist the FTC in planning the Workshop sessions, respondents are encouraged to provide initial comments regarding the three general questions raised in the Summary above, as well as requests to participate in the workshops, to the FTC on or before December 12, 2008.

ADDRESSES: Interested parties are invited to submit written comments or requests to participate in the public workshop electronically or in paper form. Comments and requests should refer to ''Resale Price Maintenance Workshop, P090400'' to facilitate their organization. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*)—and therefore should not include any sensitive or confidential information. In particular, comments and requests should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments and requests also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments and requests should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) (2008). Comments and requests containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[2]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments and requests in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-resalepricemaintenanceworkshop/*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-resalepricemaintenanceworkshop/*). Additionally, you may inform the FTC of your desire to participate in the Workshop by emailing information regarding your interest in participation, as well as the issue(s) you might wish to address, to the FTC at *rpmworkshop@ftc.gov*. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment or request filed in paper form should include the reference to ''Resale Price Maintenance Workshop, P090400'' both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex R), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if

manufacturer, it is said to be maximum RPM. Thomas K. McCaw, *Competition and ''Fair Trade'': History and Theory*, 16 Res. In Econ. Theory 185, 186 (1996).

[2] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment or request must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment or request to be withheld from the public record. The request for confidential treatment will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c) (2008).

possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments and requests to participate to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments and requests that it receives, whether filed in paper or electronic form. Comments and requests received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments and requests to participate it receives before placing them on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

The workshop will be open to the public, and there is no fee for attendance. For admittance to the building, all attendees will be required to show a valid photo identification, such as a driver's license. Pre-registration is not required for attendees, but persons desiring to participate as panelists must submit a request to participate and file a comment. Members of the public and press who cannot attend in person may view a live webcast of the workshop on the FTC's website. The workshop will be transcribed, and the transcript will be placed on the public record.

The workshop venue will be accessible to persons with disabilities. If you need an accommodation related to a disability, call Carrie McGlothin at (202) 326-3388. Such requests should include a detailed description of the accommodations needed and a way to contact you if we need more information. Please provide advance notice of any needs for such accommodations.

FOR FURTHER INFORMATION CONTACT: James C. Cooper, Deputy Director, Office of Policy Planning, 600 Pennsylvania Ave., N.W., Washington, DC 20580, telephone 202-326-3367, or John Yun, Staff Economist, Antitrust I Division, Bureau of Economics, 600 Pennsylvania Ave., N.W., Washington, DC 20580, telephone 202-326-2433; or by email at *rpmworkshop@ftc.gov.* Detailed agendas for the Workshops will be available on the FTC Home Page (http://www.ftc.gov).

SUPPLEMENTARY INFORMATION: Section 1 of the Sherman Act condemns ''every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade and commerce among the several States, or with foreign nations,''[3] which includes violations of the Sherman Act.[4] Although the FTC does not directly enforce Section 1 of the Sherman Act, Section 5 of the FTC Act condemns ''unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.''[5] In 1911, two U.S. Supreme Court decisions held, respectively, that RPM agreements were illegal as a matter of law (*Dr. Miles*);[6] and that Section 1 of the Sherman Act prohibited restraints of trade that are ''unreasonably restrictive of competitive conditions'' (*Standard Oil*).[7] Except to the extent that RPM was exempted from federal antitrust liability by the Fair Trade Laws from 1937 to 1975,[8] minimum RPM was treated as *per se* illegal under the antitrust laws until the Supreme Court decided the *Leegin*[9] case in June 2007.[10]

Leegin overruled the *Dr. Miles* decision, finding that the Court's more recent decisions were inconsistent with rationales upon which *Dr. Miles* was based.[11] The Court directed that the legality of minimum RPM would be determined under the rule of reason; however, the Court did not specify the contours of the rule of reason analysis that would be necessary or appropriate in all cases. Rather, it observed that:

> As courts gain experience considering the effects of these restraints by applying the rule of reason over the course of decisions, they can establish the litigation structure to ensure the rule operates to eliminate anticompetitive restraints from the market and to provide more guidance to businesses. Courts can, for example, devise rules over time for offering proof, or even presumptions where justified, to make the rule of reason a fair and efficient way to prohibit anticompetitive restraints and to promote competitive ones.

Id. at 2720.

In the *Nine West* matter,[12] the Commission recently confronted the Court's lack of specificity, as follows:

> As it abandoned the *per se* prohibition of *Dr. Miles*, the Court cautioned that it was not declaring RPM to be *per se* legal. *Leegin* summarized some of the possible procompetitive and anticompetitive consequences of resale price maintenance. The Court explained that RPM might stimulate interbrand competition and have a procompetitive effect on competition, so that RPM does not meet the *per se* illegality standard of a practice that ''always or almost always tends to restrict competition and decrease output.'' At the same time, after reviewing the potential anticompetitive effects of RPM, the Court said, ''[a]s should be evident, the potential anticompetitive consequences of vertical price restraints must not be ignored or underestimated.'' In light of these potential adverse effects, the Court further observed that ''[i]f the rule of reason were to apply to vertical price restraints, courts would have to be diligent in eliminating their anticompetitive uses from the market.''
>
> The Court's comments about the possible harms of RPM, and its caution to lower courts ''to be diligent in eliminating their anticompetitive uses from the market,'' can usefully be understood in the context of the debate between the *Leegin* majority and the dissent about the wisdom of abandoning the *per se* ban of *Dr. Miles*. The dissent argued that the majority had slighted the potential anticompetitive consequences of RPM. The majority's recitation of examples of some of the possible competitive harms and its call for ''diligent'' efforts by the lower courts to be attentive to these harms can be seen as an attempt to provide assurances that the Court foresaw a

[3] 15 U.S.C. § 1.

[4] *See Fed. Trade Comm'n v. Motion Picture Advert. Serv. Co.*, 344 U.S. 392, 394-95 (1953) (stating that Section 5 of the FTC Act ''condemn[s] as 'unfair methods of competition' existing violations of '' the Sherman and Clayton Acts).

[5] 15 U.S.C. § 45

[6] *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911). Subsequent cases referred to RPM as being *per se* illegal.

[7] *Standard Oil of New Jersey v. United States*, 221 U.S. 1, 58 (1911)

[8] McCraw, *supra* note 1, at 187.

[9] *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S. Ct. 2705 (2007).

[10] The Supreme Court subjected maximum RPM to the rule of reason in 1997. *State Oil Co. v. Khan*, 522 U.S. 3 (1997).

[11] *Id.* at 2712-25 (*citing, inter alia*, Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977) (*''GTE Sylvania''*); Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717 (1988); and State Oil Co. v. Khan, 522 U.S. 3 (1997)).

[12] *Nine West Group, Inc.*, Docket No. C-3937 (Apr. 11, 2000), Order Granting In Part Petition to Reopen and Modify Order Issued April 11, 2000 (May 6, 2008), available at: (*http://www.ftc.gov/os/caselist/9810386/080506order.pdf.*)

useful role for continued antitrust scrutiny of RPM.

* * *

At this early stage of the application of *Leegin* by the lower courts and the Commission, the *Leegin* factors can serve as helpful guides to begin an assessment of when RPM deserves closer scrutiny. Through the Commission's own enforcement work, research, and external consultations such as workshops, we anticipate further refinements to this analysis, including the further specification of scenarios in which RPM poses potential hazards and those in which it does not.

Nine West, supra n. 11 at 9-14 (citations omitted).

By holding these Workshops, the FTC hopes to identify the market facts, circumstances, and conditions under which the use of RPM is likely to be procompetitive or benign, as opposed to anticompetitive and harmful to consumers. The Commission believes that an appropriate antitrust approach to RPM requires the means for distinguishing permissible from impermissible conduct in varied circumstances. Moreover, those means should provide reasonable guidance to businesses attempting to evaluate the legality of proposed conduct before undertaking it. The development of clear standards that both protect consumers and enable businesses to adopt strategies that comply with the antitrust laws presents some of the most complex issues facing the Commission, the courts, and the antitrust bar.

Given this challenge—and because antitrust analysis must reflect the particular market facts and circumstances within which a restraint has been adopted—the FTC encourages commenters to describe actual examples of RPM that the FTC should consider in the context of the Workshop, discuss the business reasons for the conduct, and the actual or likely competitive effects of the conduct.

Illustrative Questions for Consideration With Respect to the RPM Usages That the Commenter Discusses. Commenters should indicate whether responses would change if the conduct is an express RPM agreement or an RPM arrangement that achieves its outcome under a *Colgate* policy.[13] Commenters should also indicate whether responses would differ if the arrangement were directed toward different industry levels (*e.g.*, retail, wholesale, or manufacturer).

1. How should the structure of the market and the market shares of participants be taken into account in analyzing RPM?

2. Are there other specific market facts or circumstances that might have an impact on the likely competitive effects of RPM under the circumstances described? Without limiting the scope of this question, commenters are specifically invited to comment on the effect on marginal and inframarginal consumers.

3. What are the business reasons (*e.g.*, management, marketing, financial, etc.) for the use of RPM? Are there alternative business strategies available to achieve the same results? What factors, including any cost savings, entered the decision to use RPM to achieve the desired result?

4. To what extent does uncertainty regarding the legality of RPM under state law affect the decision to use RPM?

5. What are the likely procompetitive and anticompetitive effects of RPM under the circumstances described?

6. What strategies might competitors use to respond to a loss of sales to a firm that uses RPM?

7. Under what market conditions is the use of RPM likely either to promote or hinder market entry by other manufacturers or retailers?

8. Are there industries where the use of RPM is prominent?

9. Are there any original theoretical, analytical or empirical studies on the nature or competitive effects of RPM or alternatives to RPM that should be brought to the attention of the Commission?

10. What tests or standards should courts or enforcement agencies use in assessing whether particular conduct violates Sections 1 or 5? Commenters are specifically requested to assess whether the test or standard applicable to a particular usage of RPM might vary based on particular market facts or circumstances. Additionally, are there particular market facts and circumstances where the approach established by the Court of Appeals for the District of Columbia Circuit in *Polygram Holding, Inc. v. Fed. Trade Comm'n*, 416 F. 3d (D.C. Cir. 2005), would or would not be appropriate?

[13] A manufacturer uses a *Colgate* policy when it does not ask retailers for any agreement regarding resale prices; rather, the manufacturer announces in advance that it will only sell its products to retailers that resell those products at or above the prices it specifies, and then enforces the policy by deciding unilaterally that it will refuse to make any future sales of its products to any retailer who has violated its pricing policies. These arrangements take their name from the Supreme Court's decision in *United States v. Colgate & Co.*, 250 U.S. 300, 307-8 (1919) (distinguishing *Dr. Miles* on the ground that the ''unlawful combination [in that case] was effected through contracts which undertook to prevent dealers from freely exercising the right to sell'').

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–26404 Filed 11–4–08: 8:45 am]

BILLING CODE 6750–01–S

GENERAL SERVICES ADMINISTRATION

Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meeting/SUBJECT≤

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The U.S. General Services Administration's (GSA) Multiple Award Schedule Advisory Panel (MAS Panel), a Federal Advisory Committee, meeting scheduled for October 27, 2008 was cancelled.

Dated: October 30, 2008.

David A. Drabkin,

Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, General Services Administration.

[FR Doc. E8–26323 Filed 11–04–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Linde Ceramics Plant, Tonawanda, NY, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Linde Ceramics Plant, Tonawanda, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Linde Ceramics Plant.

Location: Tonawanda, New York.

Job Titles and/or Job Duties: All employees.

Period of Employment: January 1, 1954 through July 31, 2006 (during the applicable covered residual radiation period).

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: October 16, 2008.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E8–26366 Filed 11–4–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers, Panel B, Funding Opportunity Announcement (FOA) DP09–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 8:30 a.m.–5 p.m., January 13, 2009 (Closed). 8:30 a.m.–5 p.m., January 14, 2009 (Closed).

Place: W Hotel, Atlanta Midtown, 188 14th Street, NE., Atlanta, GA 30361.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''Health Promotion and Disease Prevention Research Centers, Panel B, FOA DP09–001.''

Contact Person for More Information: Juliana K. Cyril, Ph.D., M.P.H., Health Scientist, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, *Telephone:* (404) 639–4639.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–26295 Filed 11–4–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[NIOSH–008 (Powered Air-Purifying Respirators); NIOSH–148 (Air Fed Suits); NIOSH–034 (Open-Circuit, Self-Contained Breathing Apparatus, End of Service Life Indicator); NIOSH–0146 (Personal Protective Technology Action Planning)]

Notice of a Public Meeting

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of a public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following public meeting to discuss NIOSH's Respirator Standards Development Efforts and the Personal Protective Technology (PPT) Program Action Planning Efforts.

Authority: Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*

Public Meeting Time and Date: 8:30 a.m.–5 p.m., December 2, 2008. On-site registration will be held beginning at 7:45 a.m.

Place: Hyatt Regency Pittsburgh International Airport, 1111 Airport Boulevard, Pittsburgh, Pennsylvania 15231. Interested parties should make hotel reservations directly with the Hyatt Regency Pittsburgh International Airport by calling (800) 233–1234, before the cut-off date of November 17, 2008. You must reference the NIOSH room block to receive the special group rate of $114.00 per night that has been negotiated for meeting guests.

Purpose of Meeting: The NIOSH, National Personal Protective Technology Laboratory (NPPTL), will conduct a public meeting to discuss current respirator standards development projects for powered air-purifying respirators (PAPR); air fed suits; and open-circuit, self-contained breathing apparatus, end of service life indicators. The NIOSH Personal Protective Technology program action planning to address National Academies program evaluation recommendations will also be discussed. There will be an opportunity for discussion following NIOSH's presentations and an accompanying poster session discussing PAPR.

Status: The meeting will be open to the public, limited only by the space available. The meeting room accommodates approximately 200 people.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, Mailstop C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Requests may also be submitted by telephone (513) 533–8611, facsimile (513) 533–8285, or e-mailed to *niocindocket@cdc.gov*. All requests to present should contain the name, address, and telephone number, relevant business affiliations of the presenter, topic of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH will notify the presenter that their presentation is scheduled. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Background: NIOSH will present information to attendees concerning the development of the concepts being considered for the development of performance criteria for the various classes of respirators. Participants will be given an opportunity to ask questions and to present individual comments that they may wish to have considered.

Contact Person for Technical Information: Jonathan Szalajda, Branch Chief, NPPTL, Policy and Standards Development Branch, Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *npptlevents@cdc.gov*. Information regarding documents that will be discussed at the meeting may be obtained from the NIOSH web site using this link: *http://www.cdc.gov/niosh/*

review/public/ using the docket numbers listed in this notice.

Dated: October 27, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–26359 Filed 11–4–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director (OD)/Office of the Chief of Public Health Practice (OCPHP)/Office of Minority Health and Health Disparities (OMHD)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, Consultation and Coordination with Indian Tribal Governments, the Centers for Disease Control (CDC) OD/OSI/OMHD announces the following meeting and Tribal Consultation Session:

Name: Tribal Consultation Advisory Committee (TCAC) Meeting and the Biannual Tribal Consultation Session.

Times and Dates: TCAC Meeting on November 18–19, 2008 from 8 a.m.–5:30 p.m. and the Biannual Tribal Consultation Session on February 28, 2009 from 8–6 p.m.

Place: Hosted by Tohono O'odham Nation at the Desert Diamond Casino & Hotel, 7350 S. Nogales Highway, Tucson, Arizona 85706, *Telephone:* 1–877–777–4212.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 80 people.

Purpose: CDC established their Tribal Consultation Policy in October of 2005 with the primary purpose of providing guidance across the agency to work effectively with American Indian/Alaska Native (AI/AN) tribes, communities, and organizations to enhance AI/AN access to CDC programs. In October of 2005, an Agency Advisory Committee (CDC/ATSDR Tribal Consultation Advisory Committee—TCAC) was established to provide a complementary venue wherein tribal representatives and CDC staff will exchange information about public health issues in Indian Country, identifying urgent public health issues in Indian Country, and discuss collaborative approaches to these issues. Within the CDC Consultation Policy, it is stated that CDC will conduct government-to-government consultation with elected tribal officials or their designated representatives and also confer with tribal and Alaska Native organizations and AI/AN urban and rural communities before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CDC believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall government-to-government consultation activities rests within the Office of the Director, Coordinating Centers, Coordinating Offices, and center leadership shall actively participate in TCAC meetings, and HHS-sponsored regional, and national tribal consultation sessions as frequently as possible.

Matters To Be Discussed: The TCAC will convene their quarterly committee meeting with discussions and presentations from various CDC senior leadership on activities and areas identified by tribal leaders as priority public health issues. The Biannual Tribal Consultation Session will engage CDC Senior leadership from the Office of the Director and various CDC Offices and National Centers including the Financial Management Office (FMO), National Center for Environmental Health and the Agency for Toxic Substances (NCEH/ATSDR), Coordinating Office for Terrorism and Preparedness and Emergency Response (COTPER), National Center for Health Marketing (NCHM), the Office of Chief of Public Health Practice, and the Office of Enterprise Communications (OEC). Opportunities will be provided during the Consultation Session for tribal testimony. Tribal Leaders are encouraged to submit written testimony by close of business on November 7, 2008 to Capt. Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of Minority Health and Health Disparities, 1600 Clifton Road, NE., Mailstop E–67, Atlanta, GA 30333, telephone (404)498–2343, fax (404)498–2355, e-mail: *pws8@cdc.gov.* Depending on the time available it may be necessary to limit the time of each presenter.

Please reference the Web link of *http://www.cdc.gov/omhd/TCAC/AAC.html* to review information about the TCAC and CDC's Tribal Consultation Policy.

For Further Information Contact: Capt. Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of Minority Health and Health Disparities, 1600 Clifton Road, NE., Mailstop E–67, Atlanta, GA 30333, telephone (404)498–2343, fax (404)498–2355, *e-mail: pws8@cdc.gov.*

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–26292 Filed 11–4–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel. Pharmacological approaches to KNa channels and the FMRP signaling pathway.

Date: December 5, 2008.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26336 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel ''SCREENABLE DISORDERS.''

Date: December 3, 2008.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26337 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Innovations in Lower Limb Prostheses Attachment (RO1).

Date: December 2, 2008.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26341 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Behavioral Research Training in Intellectual/Developmental Disabilities.

Date: November 17, 2008.

Time: 11:45 a.m. to 12:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26342 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Teleconference Regarding Licensing and Collaborative Research Opportunities for: Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

Technology Summary

The technology is an improved method for the detection of thyroid

cancer using fine needle aspiration (FNA) biopsy. It makes use of gene expression profiles and/or their proteins to distinguish accurately malignant thyroid nodules from benign nodules. This technique exhibits superior accuracy to current cytology-based FNA diagnosis. This improved diagnostic also has potential use for the staging and treatment of thyroid cancer, a disease that disproportionately afflicts women.

Competitive Advantage of Our Technology

The identification of markers that can determine a specific type of tumor, predict patient outcome or the tumor response to specific therapies is currently a major focus of cancer research. The use of gene profiles to detect thyroid malignancy has the advantage that it complements the current method of diagnosis using FNA, but greatly increases the accuracy of detecting malignant thyroid lesions.

Technology Description

This technology is based on the discovery of differentially expressed thyroid (DET) genes and their encoded proteins whose expression levels can be correlated to benign or malignant states in a thyroid cell. Specifically, this data arose from a microarray analysis of genes expressed in the eight subtypes of thyroid tumors that are typically difficult to diagnose by cytology of fine needle aspiration (FNA) biopsies. Analysis of the (DET) genes led to the development of a 6 gene and 10 gene model that distinguishes benign vs. malignant papillary thyroid tumors. Subsequently, a 72 gene model has been developed for diagnosing less common forms of thyroid cancer like follicular carcinoma and others. These results provide a molecular classification system for thyroid tumors and this in turn provides a more accurate diagnostic tool for the clinician managing patients with suspicious thyroid lesions.

The invention employs analysis of DET genes (C21orf4, Hs.145049, Hs.296031, KIT, LSM7, SYNGR2, C11orf8, CDH1, FAM13A1, IMPACT, and KIAA1128) using microarrays or quantitative RT–PCR (qRT–PCR) to distinguish between malignant and benign tumors. For qRT–PCR, primer and probe sequences were designed to amplify the six genes or ten genes that constitute the model. Other means of detection may also be used such as in situ hybridization, Northern blot, Western blot, and immunocytochemistry. In addition to diagnostics, this invention can be used in the staging of thyroid malignancies by measuring changes in DET gene and protein expression relative to reference cells. Finally, this invention can also be used in the discovery of therapeutic agents through the detection of changes in DET gene and protein levels prior to and after treatment.

Market

In 2008, it is expected that about 37,340 new cases of thyroid cancer will be diagnosed in the United States. Women will be disproportionately affected constituting 76% of these new cases. In contrast to other adult cancers, thyroid cancer mainly affects younger people with nearly 2 out of 3 cases found in patients between the ages of 20 and 55. Fortunately, this is one of the least deadly cancers; the percentage of people living at least 5 years after being diagnosed is about 97%.

Although thyroid cancer is one of the most curable cancers, current methods of diagnosis are inaccurate. Thyroid cancer usually presents itself as nodules or lumps on the lobes of the gland. The development of nodules is common with increasing age; however, most nodules are usually benign. To distinguish benign from malignant nodules, a biopsy is performed using fine-needle aspiration biopsy (FNA). Then this sample is examined for cytological features associated with cancer. However, cancer is clearly diagnosed in only 5% of FNA biopsies. Many biopsy results are inconclusive and labeled as suspicious or indeterminate because of difficulties in distinguishing benign and malignant thyroid tumors solely on cellular features. This result greatly impacts treatment decisions because patients with benign nodules may be subjected to unnecessary surgery that will impact their lives considerably. Thus, there is a compelling need to develop more accurate diagnostic tests to detect thyroid cancer.

Patent Estate

This technology consists of the following patent applications:

I. United States Patent Application No. 11/547,995 entitled ''Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions'' filed October 10, 2004 (HHS Ref. No. E–124–2004/2–US–03); Pre-Grant Publication No. 2008–0145841.

II. European Patent Application No. 05735973.9 entitled ''Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions'' filed April 11, 2005 (HHS Ref. No. E–124–2004/2–PCT–01); WO publication No. WO/2005/100608.

III. PCT Application No. PCT/US2008/10139 entitled ''Diagnostic Tool for Diagnosing Benign Versus Malignant Thyroid Lesions'' filed August 27, 2008 (HHS Ref. No. E–326–2007/0–PCT–01).

Next Step: Teleconference

There will be a teleconference where the principal investigator will explain this technology. Licensing and collaborative research opportunities will also be discussed. If you are interested in participating in this teleconference please call or e-mail Mojdeh Bahar; (301) 435–2950; *baharm@mail.nih.gov*. OTT will then e-mail you the date, time and number for the teleconference.

Dated: October 23, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–26334 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, STRB SEP.

Date: November 12, 2008.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301–435–0810, *matocham@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: National Center for Research Resources Special Emphasis Panel, SEPA 09 Review.

Date: December 15–16, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael L. Bloom, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6701 Democracy Blvd., Room 1090, Bethesda, MD 20892, 301–435–0965, *bloomm2@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel, The BIRN-Community Service Award.

Date: February 3, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maratha F. Matocha, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Rm. 1070, Bethesda, MD 20892, 301–435–0810, *matocham@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26340 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Diabetes Mellitus Interagency Coordinating Committee; Notice of Meeting

The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on Tuesday, December 2, 2008, on the NIH campus, Building 31, C-wing, Conference Room 6, Bethesda, Maryland 20892 from 12:30 p.m. to approximately 4:30 p.m. 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 inform the Contact Person listed below at least 10 days in advance of the meeting.

The DMICC facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times annually, provide an opportunity for members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The topic of the December meeting will be ''Using Data from Managed Care Systems to Drive Improved Therapy of Diabetes.''

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees and property. 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). All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection. Visitors are strongly encouraged to take public transportation to the NIH campus as there are very few visitor parking spaces available. Building 31 is a 10-minute walk from the Medical Center Station on the Red Line of the Metro.

A registration link and information about the DMICC meeting will be available on the DMICC Web site: *http://www2.niddk.nih.gov/AboutNIDDK/CommitteesAndWorkingGroups/DMICC/Default.htm*.

For further information concerning this meeting contact Dr. Sanford Garfield, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Boulevard, Room 654, MSC 5460, Bethesda, MD 20892–5460, *Telephone:* 301–594–8803 FAX: 301–402–6271, *E-mail: garfields@mail.nih.gov*.

Dated: October 28, 2008.

Sanford Garfield,

Executive Secretary, DMICC, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, National Institutes of Health.

[FR Doc. E8–26333 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, ITMA/ITSP Conflicts.

Date: November 14, 2008.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892, 301–443–1959, *csarampo@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.

(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: October 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26335 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Organ Transplantation Program Projects.

Date: December 3, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, HIV-Associated Nephropathy.

Date: December 11, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26339 Filed 11–4–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories
8901 W. Lincoln Ave.
West Allis, WI 53227
414–328–7840/800–877–7016
(Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
585–429–2264

Advanced Toxicology Network
3560 Air Center Cove, Suite 101
Memphis, TN 38118
901–794–5770/888–290–1150

Aegis Sciences Corporation
345 Hill Ave.
Nashville, TN 37210
615–255–2400
(Formerly: Aegis Analytical Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory
9601 I–630, Exit 7
Little Rock, AR 72205–7299
501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab
8433 Quivira Road
Lenexa, KS 66215–2802
800–445–6917

Diagnostic Services, Inc., dba DSI
12700 Westlinks Drive
Fort Myers, FL 33913
239–561–8200/800–735–5416

Doctors Laboratory, Inc.
2906 Julia Drive
Valdosta, GA 31602
229–671–2281

DrugScan, Inc.

P.O. Box 2969
1119 Mearns Road
Warminster, PA 18974
215–674–9310

DynaLIFE Dx *
10150–102 St., Suite 200
Edmonton, Alberta
Canada T5J 5E2
780–451–3702/800–661–9876
(Formerly: Dynacare Kasper Medical Laboratories)

ElSohly Laboratories, Inc.
5 Industrial Park Drive
Oxford, MS 38655
662–236–2609

Gamma-Dynacare Medical Laboratories*
A Division of the Gamma-Dynacare Laboratory Partnership
245 Pall Mall Street
London, ONT, Canada N6A 1P4
519–679–1630

Kroll Laboratory Specialists, Inc.
1111 Newton St.
Gretna, LA 70053
504–361–8989/800–433–3823
(Formerly: Laboratory Specialists, Inc.)

Kroll Laboratory Specialists, Inc.
450 Southlake Blvd.
Richmond, VA 23236
804–378–9130
(Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713–856–8288/800–800–2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908–526–2400/800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919–572–6900/800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
1120 Main Street
Southaven, MS 38671
866–827–8042/800–233–6339
(Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics
10101 Renner Blvd.
Lenexa, KS 66219
913–888–3927/800–873–8845
(Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics*
6740 Campobello Road
Mississauga, ON
Canada L5N 2L8
905–817–5700
(Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc.
402 W. County Road D
St. Paul, MN 55112
651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, MN 55417
612–725–2088

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc.
1213 Genoa-Red Bluff
Pasadena, TX 77504
888–747–3774
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories
123 International Way
Springfield, OR 97477
541–341–8092

Pacific Toxicology Laboratories
9348 DeSoto Ave.
Chatsworth, CA 91311
800–328–6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories
110 West Cliff Dr.
Spokane, WA 99204
509–755–8991 / 800–541–7891x7

Pharmatech, Inc.
10151 Barnes Canyon Road
San Diego, CA 92121
858–643–5555

Quest Diagnostics Incorporated
3175 Presidential Dr.
Atlanta, GA 30340
770–452–1590 / 800–729–6432
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Road
Norristown, PA 19403
610–631–4600 / 877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
7600 Tyrone Ave.
Van Nuys, CA 91405
866–370–6699 / 818–989–2521
(Formerly: SmithKline Beecham Clinical Laboratories)

S.E.D. Medical Laboratories
5601 Office Blvd.
Albuquerque, NM 87109
505–727–6300 / 800–999–5227

South Bend Medical Foundation, Inc.
530 N. Lafayette Blvd.
South Bend, IN 46601
574–234–4176 x276

Southwest Laboratories
4645 E. Cotton Center Boulevard
Suite 177
Phoenix, AZ 85040
602–438–8507 / 800–279–0027

Sparrow Health System
Toxicology Testing Center, St. Lawrence Campus
1210 W. Saginaw
Lansing, MI 48915
517–364–7400
(Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory
1000 N. Lee St.
Oklahoma City, OK 73101
405–272–7052

Toxicology & Drug Monitoring Laboratory
University of Missouri Hospital & Clinics
301 Business Loop 70 West, Suite 208
Columbia, MO 65203
573–882–1273

Toxicology Testing Service, Inc.
5426 N.W. 79th Ave.
Miami, FL 33166
305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory
2490 Wilson St.
Fort George G. Meade, MD 20755–5235
301–677–7085

The following laboratory will be voluntarily withdrawing from the National Laboratory Certification Program on November 15, 2008:

Laboratory Corporation of America Holdings
550 17th Ave., Suite 300
Seattle, WA 98122
206–923–7020 / 800–898–0180
(Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of

Laboratory of Pathology of Seattle, Inc.)

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E8–26466 Filed 11–4–08; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1806–DR]

Florida; 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 Florida (FEMA–1806–DR), dated October 27, 2008, and related determinations.

DATES: *Effective Date:* October 27, 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 October 27, 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 Florida resulting from Hurricane Gustav during the period of August 31 to September 7, 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 Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jeffery L. Bryant, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Florida have been designated as adversely affected by this declared major disaster:

Bay, Escambia, Franklin, Gulf, Okaloosa, and Santa Rosa Counties for Public Assistance.

All counties within the State of Florida 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. E8–26298 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1805–DR]

Ohio; 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 Ohio (FEMA–1805–DR), dated October 24, 2008, and related determinations.

DATES: *Effective Date:* October 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: Notice is hereby given that, in a letter dated October 24, 2008, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from a severe wind storm associated with Tropical Depression Ike on September 14, 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 Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent

with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael H. Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Ohio have been designated as adversely affected by this declared major disaster:

Ashland, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Coshocton, Delaware, Fairfield, Franklin, Greene, Guernsey, Hamilton, Harrison, Highland, Hocking, Holmes, Knox, Licking, Madison, Miami, Montgomery, Morrow, Perry, Pickaway, Preble, Shelby, Summit, Tuscarawas, Union, and Warren Counties for Public Assistance.

All counties within the State of Ohio 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. E8–26303 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1795–DR]

Indiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1795–DR), dated September 23, 2008, and related determinations.

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

Floyd, Jackson, Lawrence, Martin, Perry, Pike, and Spencer Counties for Public Assistance (already designated for Individual Assistance).

Decatur, Dubois, Franklin, Gibson, Newton, Ohio, Orange, Rush, Union, Vanderburgh, and Warrick Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26299 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1802–DR]

Kentucky; Amendment No. 2 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 Commonwealth of Kentucky (FEMA–1802–DR), dated October 9, 2008, and related determinations.

DATES: *Effective Date:* October 27, 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 Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 9, 2008.

Washington County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26301 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1792–DR]

Louisiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1792–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* October 29, 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 Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 13, 2008.

Natchitoches Parish for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26297 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1801–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–1801–DR), dated October 8, 2008, and related determinations.

DATES: *Effective Date:* October 28, 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 North Carolina is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 8, 2008.

New Hanover County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26296 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1803–DR]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1803–DR), dated October 9, 2008, and related determinations.

DATES: *Effective Date:* October 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 Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 9, 2008.

Garfield County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26300 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1791–DR]

Texas; 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 Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* October 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 Texas 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 September 13, 2008.

Anderson, Bowie, Leon, and Milam Counties for Public Assistance.

Grimes, Jasper, Jefferson, Nacogdoches, San Jacinto, Walker, and Waller Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26302 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Availability of Surface Transportation Grant Programs

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: DHS is announcing that on or about November 5, it will issue guidance and accept applications for surface transportation security improvement grants for fiscal year (FY) 2009. Eligibility for the FY 2009 grants, as provided in the new guidance, may have changed from previous years. Applications for these grants must be submitted pursuant to the procedures outlined in the guidance to be made available on or about November 5, 2008.

FOR FURTHER INFORMATION CONTACT: e-mail: *TSAgrants@tsa.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Extended Programs

On or about November 5, 2008, DHS will announce extensions of, and possible changes to, four existing surface transportation grant programs that are cooperatively managed by the Transportation Security Administration and the Federal Emergency Management Agency: Transit (Transit Security Grant Program or TSGP), Freight Rail (Freight Rail Security Grant Program or FRSGP), Intercity Bus (Intercity Bus Security Grant Program, or IBSGP) and Trucking (Trucking Security Program or TSP). By this notice, DHS is encouraging appropriate entities in these transportation sectors to review the forthcoming guidance and, as appropriate, apply for grants under the programs if they are eligible applicants under the requirements outlined in the forthcoming guidance. At the same time that DHS announces grant guidance, DHS will announce extensions of the existing TSGP, FRSGP, and TSP. The Transit Security Grant Program (TSGP) funds are currently directed to high-risk transit systems for planning, training, public awareness, operational activities, protection for multi-user and single-user high-density stations, and other hardening activities or systems.

The Freight Rail Security Grant Program (FRSGP) is a component of the TSGP. The FRSGP was created by the ''Implementing Recommendations of the 9/11 Commission Act of 2007'' (9/11 Commission Act).[1] Section 1513 of the 9/11 Commission Act directs DHS to make funds for security improvement grants available to certain entities involved in or with the freight railroad industry and specifies the uses to which the funds may be applied. Currently, FRSGP funds are used for security plans, vulnerability assessments, and training for Class I, II, and III railroads.

Currently, Trucking Security Program (TSP) funds are used to service an anti-terrorism and security awareness program for professionals and operating entities within the highway sector to include: (1) Participant identification and recruitment; (2) training; (3) communications; (4) information analysis and distribution; and (5) planning.

General Information

In grant guidance to be released on or about November 5, 2008, DHS will identify the categories of transit, freight rail, trucking, and intercity bus entities that are eligible for funding under the programs and the uses to which funding may be applied. With respect to the TSGP, FRSGP and TSP, eligibility will not necessarily be limited to entities that have been eligible for funding under previous DHS grant programs. To apply for grant funding under any of these grant programs, each eligible applicant must first register as a grant applicant with the Federal government at *http://www.grants.gov*. Several additional steps are required to complete this registration, including registering with the Central Contractor Registration (*http://www.ccr.gov*) and obtaining a Dun & Bradstreet (DUNS) number. Please visit *http://www.grants.gov* for more detailed information about this registration process. Please be advised that the entire process can take several weeks. DHS will post additional information about registration when we issue the grant guidance on or about November 5, 2008. After that date, you may obtain an electronic copy of the grant guidance at *http://www.tsa.gov/grants*.

Issued in Arlington, Virginia, on October 31, 2008.

John Sammon,

Assistant Administrator, Transportation Sector Network Management.

[FR Doc. E8–26406 Filed 11–4–08; 8:45 am]

BILLING CODE 9110–05–P

[1] Public Law 110–53; 121 Stat. 266; August 3, 2007.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2008–0101]

Notice of Meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (''COAC'') will meet on November 20, 2008 in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet Thursday, November 20 from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate on or before Monday, November 17, 2008.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC. Written material and comments should reach the contact person listed below by November 17, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by November 17, 2008. Comments must be identified by USCBP–2008–0101 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: traderelations@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–344–2064.
- *Mail:* Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 8.5C, Washington, DC 20229; *traderelations@dhs.gov;* telephone 202–344–1440; facsimile 202–344–2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS and the Department of the Treasury.

The eighth meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Advance Trade Data (''10+2'').
2. C–TPAT (Customs-Trade Partnership Against Terrorism).
3. Intellectual Property Rights Enforcement.
4. Customs Bonds.
5. Import Safety Initiatives.
6. World Customs Organization Updates.
7. CBP Trade Strategy.
8. Agriculture Programs Update.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close-of-business Monday, November 17, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, telephone 202–344–1440; facsimile 202–344–2064.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: November 3, 2008.

Kimberly A. Marsho,

Director, Office of Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E8–26521 Filed 11–4–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2008–N0211; 20131–1265–2CCP S3]

Attwater Prairie Chicken National Wildlife Refuge, Colorado and Austin Counties, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Attwater Prairie Chicken National Wildlife Refuge, located in Colorado and Austin Counties, Texas. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by January 5, 2009. We will hold public meetings to begin the CCP planning process. We will announce opportunities for public input in the local news media throughout the CCP planning process. Open house meetings will be scheduled and held throughout the scoping phase of the CCP development process.

ADDRESSES: Send your comments, questions, and requests for more information by any of the following methods.

E-mail: Chris_Perez@fws.gov. Include ''Attwater Prairie Chicken CCP'' in the subject line of the message.

Fax: Attn: Chris Perez, CCP Planner, 956–782–0641.

U.S. Mail: Rt 2, Box 202A, Alamo, TX 78516.

In-Person Drop-off: You may drop off your comments during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Rossignol, Refuge Manager; *Telephone:* 979–234–3021; *Fax:* 979–234–3278. Chris Perez, CCP Planner; *Telephone:* 956–784–7553; *Fax:* 956–782–0641.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Attwater Prairie Chicken National Wildlife Refuge (Refuge), located in Colorado and Austin Counties, TX. This notice complies with our CCP policy to (1) other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each National Wildlife Refuge. The purpose for developing a CCP is to provide Refuge Managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining the broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time, we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Attwater Prairie Chicken National Wildlife Refuge.

We will conduct the EA in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The purposes of Attwater Prairie Chicken National Wildlife Refuge are to preserve and restore coastal prairie habitat for the endangered Attwater's prairie chicken, and for the development, advancement, management, conservation, and protection of other fish and wildlife resources.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2008.

Brian Millsap,

Acting, Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E8–26367 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2008–N0236; 20131–1265–2CCP S3]

Wichita Mountains Wildlife Refuge, Comanche County, OK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Wichita Mountains Wildlife Refuge, located in Comanche County, Oklahoma. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by March 5, 2009. We will hold public meetings to begin the CCP planning process. We will announce opportunities for public input in the local news media throughout the CCP planning process. Open house meetings will be scheduled and held throughout the scoping phase of the CCP development process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: Yvette_TruittOrtiz@fws.gov or *Jeff_Rupert@fws.gov.* Include ''Wichita Mountains Wildlife Refuge'' in the subject line of the message.

Fax: Attn: Jeff Rupert, Refuge Manager, 580–429–9323.

U.S. Mail: Wichita Mountains Wildlife Refuge, 32 Refuge Headquarters, Indiahoma, OK 73552.

In-Person Drop-off: You may drop off your comments during regular business hours at the Refuge Headquarters located approximately 25 miles northwest of Lawton, Oklahoma. From Interstate 44, take Highway 49 (exit 45), go west 10 miles to the Refuge gate. If coming from Highway 62, take Highway 115 (Cache exit) north to the Refuge gate.

FOR FURTHER INFORMATION CONTACT: Yvette Truitt-Ortiz, Natural Resource Planner *Telephone:* 505–248–6452; *Fax:* 505–248–6874; *e-mail: Yvette_TruittOrtiz@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Wichita Mountains Wildlife Refuge (Refuge), located in Comanche County, OK. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each National Wildlife Refuge. The purpose for developing a CCP is to provide Refuge Managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Wichita Mountains Wildlife Refuge.

We will conduct the EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Wichita Mountains Wildlife Refuge

Wichita Mountains Wildlife Refuge is located in Comanche County, Oklahoma, and encompasses 59,020 acres of mixed grass prairie and crosstimber with granite rock outcroppings. The Refuge, which is a remnant of what was once a much larger natural area, consists of lakes, streams, canyons, mountains, and grasslands, creating an oasis for both wildlife and people in southwestern Oklahoma. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuge, and how the Service will implement management strategies for the conservation and development of these natural resources.

We estimate that the draft environmental documents will be available in spring 2010 for public review and comment.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 12, 2008.

Brian Millsap,

Acting, Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. E8–26369 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0232; 40136–1265–0000–S3]

Wolf Island National Wildlife Refuge, McIntosh County, GA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for Wolf Island National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: A copy of the CCP may be obtained by writing to: Mr. Shaw Davis, Savannah Coastal Refuges' Complex, 1000 Business Center Drive, Parkway Business Center, Suite 10, Savannah, GA 31405. The CCP may also be accessed and downloaded from the Service's Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Mr. Shaw Davis; *Telephone:* 912–652–4030 x 106; *fax:* 912–652–4385; *e-mail: shaw_davis@fws.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Wolf Island NWR. We started this process through a notice in the **Federal Register** on October 30, 2006 (71 FR 63344). For more about the process, see that notice.

Wolf Island NWR, 12 miles east of Darien, Georgia (by boat), consists of a long narrow strip of oceanfront beach backed by a broad band of salt marsh. Over 75 percent of the refuge's 5,126 acres are composed of saltwater marshes. The refuge was established by Executive Order 5316 on April 3, 1930, when the 538 acres already in government ownership were set aside as a sanctuary for migratory birds. Wolf Island NWR is a designated National Wilderness Area and is maintained as such, with its primary purpose being to provide protection for migratory birds and such endangered and threatened species as the loggerhead sea turtle and piping plover. Due to its Wilderness designation, no public use facilities exist on the refuge. Though the refuge's saltwaters are open to a variety of recreational activities, all beach, marsh, and upland areas are closed to the public.

This three-island wildlife refuge at the mouth of the Altamaha River consists mainly of salt marsh and provides critical sanctuary for rare migrating birds and nursery habitat for sea turtles. Wolf Island, the largest island in the refuge, covers 4,519 acres. Its boundaries are defined by the South River to the north, Little Mud River to

the west, Altamaha Sound to the south, and the Atlantic Ocean to the east. The island has only 300 acres of dune and beach along its narrow, 4-mile-long eastern shoreline. It fronts the ocean in the Altamaha River Delta and forms a physical barrier between Doboy Sound to the north and Altamaha Sound to the south. Tucked into the mouth of Altamaha Sound and directly south of Wolf Island are Egg and Little Egg Islands. They consist of 593 and 14 acres in size, respectively, with extensive salt marsh and only 70 acres of upland.

Wolf Island is one of seven refuges administered by the Savannah Coastal Refuges' Complex. This chain of national wildlife refuges extends from Pinckney Island NWR near Hilton Head Island, South Carolina, to Wolf Island NWR near Darien, Georgia. Between these lie Savannah National Wildlife Refuge, the largest unit in the complex, and the Wassaw, Tybee, Harris Neck, and Blackbeard Island National Wildlife Refuges. Together they span a 100-mile coastline that encompasses a total of more than 56,000 acres. The Savannah Coastal Refuges' Complex is administered from a headquarters office in Savannah, Georgia.

We announce our decision and the availability of the final CCP and FONSI for Wolf Island NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment.

The compatibility determinations for (1) Hunting; (2) fishing; (3) wildlife observation and photography; (4) environmental education and interpretation; and (5) research are also available within the CCP.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. Currently, access to the refuge is limited and there is no public access allowed. This restriction limits the above activities to the waters near the refuge. We will review and update the CCP at least every15 years in accordance with the Improvement Act.

Comments

Approximately 200 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on June 12, 2008 (73 FR 33451). Two written comments were received, one from a private citizen and one from a non-governmental organization. Both commenters supported the Service's management direction.

Selected Alternative

After considering the comments we received and based on the sound professional judgment of the core planning team, we have selected Alternative C for implementation. This alternative is judged to be the most effective management action for meeting the purposes of the refuge by optimizing ecosystem management throughout the refuge. Under Alternative C, the refuge will practice ecosystem management, recognizing the ecological role of Wolf Island NWR within the interrelated Altamaha River Basin and coastal barrier island ecosystem. Human activities and natural processes within these ecosystems influence Wolf Island NWR in a variety of ways. Alternative C explicitly commits the Service to acknowledge these influences and cooperate with other stakeholders in ways that will ensure the continued protection and enhancement of the ecosystem's natural resources.

Under Alternative C, the refuge will strive to optimize its biological program, recognizing that there may be tradeoffs and opportunity costs between the various elements of the biological programs envisioned (it might not be possible to equally pursue and achieve all objectives simultaneously because of budgeting and staffing constraints or because of intrinsic conflicts between certain objectives). However, Alternative C emphasizes a broader ecosystem approach than the optional alternatives, which narrowly focused on the refuge.

The refuge will conduct baseline inventorying and monitoring programs with several partners to investigate threats and opportunities within the ecosystem as they may impact refuge goals and objectives. Resource protection within the ecosystem will be intensified. Control of invasive species will commence and efforts will be made to reduce beach erosion. Service staff will work with partners to manage and improve habitats within the ecosystem.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 12, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–26370 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14905–A, F–14905–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chinuruk Incorporated. The lands are in the vicinity of Nightmute, Alaska, and are located in:

Seward Meridian, Alaska

T. 5 N., R. 87 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 22, inclusive.
Containing approximately 9,802 acres.

T. 6 N., R. 87 W.,
Secs. 29 to 33, inclusive.
Containing approximately 3,073 acres.

Aggregating approximately 12,875 acres.

These lands lie entirely within Clarence Rhode National Wildlife Range, established January 20, 1969. The subsurface estate will be reserved to the United States in the conveyance to Chinuruk Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 5, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E8–26371 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item, for which the University of Oregon Museum of Natural and Cultural History, Eugene, OR, and U.S. Department of Defense, Army Corps of Engineers, Portland District, Portland, OR, have joint responsibility, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1962, one cultural item was removed from site 45–KL–15, Klickitat County, WA, during excavations conducted by the University of Oregon prior to construction of the John Day Dam. The cultural item was accessioned by the University of Oregon Museum in 1962. The single unassociated funerary object is a copper bracelet.

The object was collected from the surface of an unidentified burial area associated with site 45–KL–15. No other materials were retrieved from this part of the site. Site 45–KL–15 consists of separate, severely-eroded and vandalized habitation and burial areas located along the now-inundated, north side shoreline of the Columbia River. Although no dates of occupation were obtained by the researchers, eyewitness accounts and cultural material observed in other portions of the site suggest the burial area was used during the late prehistoric through recent Historic times. The object appears to date from the Historic period. Excavation and museum documentation indicate that the copper bracelet is consistent with cultural items typically found in context with Columbia Plateau Native American burials characteristic of the Mid-Columbia River Basin.

Oral histories and published ethnographic documentation indicate that site 45–KL–15 is located within the traditional territory of Sahaptin-speaking groups represented by the present-day Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington. Per the 1855 Treaty with the Tribes of Middle Oregon, the Confederated Tribes of the Warm Springs Reservation of Oregon signers were comprised of three Chinookan-speaking Wasco bands and four Sahaptin-speaking Warm Springs bands. The Uto-Aztecan-speaking Northern Paiutes, also part of the Confederated Tribes of the Warm Springs Reservation of Oregon, joined the confederation in the 1870s. The Wasco and Warm Springs bands traditionally occupied the south shore of the Columbia River and its tributaries from Cascade Locks to just east of the present-day city of Arlington, OR. The 14 Sahaptin, Salish and Chinookan-speaking tribes and bands of the Confederated Tribes and Bands of the Yakama Nation, Washington traditionally lived on the Washington side of the Columbia River between the eastern flanks of the Cascade Range and the lower reaches of the Yakima River drainage.

Officials of the U.S. Army Corps of Engineers, Portland District have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Army Corps of Engineers, Portland District have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Warm Springs Reservation of Oregon and/or Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary object should contact Daniel Mulligan, NAGPRA Coordinator, Environmental Resources Branch, U.S. Army Corps of Engineers, Portland District, P.O. Box 2946, Portland, OR 97208–2946, telephone (503) 808–4768, before December 5, 2008. Repatriation of the unassociated funerary object to the Confederated Tribes of the Warm Springs Reservation of Oregon and/or the Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The U.S. Army Corps of Engineers, Portland District is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: October 21, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–26349 Filed 11–4–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Delaware Water Gap National Recreation Area, Bushkill, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Delaware Water Gap National Recreation Area, Bushkill, PA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Delaware Water Gap National Recreation Area.

In 1967, human remains and funerary objects were removed from the Miller Field site during legally authorized excavations by Seton Hall University, under the direction of Herbert Kraft. According to Kraft, the human remains were reburied in the early 1990s prior to the promulgation of NAGPRA's regulations. The two unassociated funerary objects are one celt and one stone. The burial style and diagnostic artifacts date the burial to the Minisink phase (A.D. 1350–1650) of the Late Woodland Period.

In 1971, human remains and funerary objects were removed from the Harry's Farm site in Warren County, NJ, during legally authorized excavations by Seton Hall University, under the direction of Herbert Kraft. According to Kraft, the human remains were reburied in the early 1990s prior to the promulgation of NAGPRA's regulations. The two unassociated funerary objects are an incised pipe and a plain pipe. The Munsee Incised style pipe dates the burial to the Minisink phase (A.D. 1350–1650) of the Late Woodland Period.

In 1974, funerary objects were removed from the Minisink site, in Sussex County, NJ, during legally authorized excavations by Seton Hall University, under the direction of Herbert Kraft. According to Kraft, the human remains were not removed from their burial pits. The 11 unassociated funerary objects are 1 ceramic pot, 1 pestle fragment, 1 celt fragment, 1 milling stone, 2 biface fragments, 3 rim sherds, 1 teshoa, and 1 brass chain. Burial styles and diagnostic artifacts date two burials to the Late Woodland Period (A.D. 1000–1650), while the brass chain dates a third burial to the Historic Period (circa A.D. 1650–1750).

In 1972, human remains and funerary objects were removed from the Pahaquarra site in Warren County, NJ, during legally authorized excavations by Seton Hall University under the direction of Herbert Kraft. According to Kraft, the human remains were reburied in the early 1990s prior to the promulgation of NAGPRA's regulations. The 61 unassociated funerary objects are 2 pots, 38 black glass beads, 4 blue faceted glass beads, 1 red glass bead, 2 shell beads, 2 brass wire hair spools, 2 gunflints, 6 flintlock trade gun fragments, 1 clasp knife, 1 bag of botanical remains, and 2 metal fragments. Burial styles and pottery types date two burials to the Late Woodland Period (A.D. 1000–1650). The remaining items date to the Historic Period (circa A.D. 1650–1750).

Archeological evidence indicates that the people living in the Upper Delaware Valley formed a distinct group with unique stone tool traditions, bone tool traditions, settlement patterns, subsistence patterns, and burial styles as early as A.D. 1000. Continuity in the artifact styles, settlement and subsistence patterns, and burial styles suggest that the same people remained in the Upper Delaware Valley throughout the Late Woodland Period (A.D. 1000–1650) and into the Historic Period (circa A.D. 1650–1750). Historic records from the 17th and 18th centuries refer to the inhabitants of the Upper Delaware Valley, including Delaware Water Gap National Recreation Area, as ''Minisink.'' Linguistic information indicates that these people spoke the Munsee dialect of the Delaware language. During consultations, tribal representatives identified the Upper Delaware Valley as the traditional territory of the Lenape, or the Delaware-speaking people. As their traditional lands were sold, some Munsee people joined the Stockbridge Mohican in Massachusetts and New York and remained with them when the community resettled in Wisconsin. Today their descendants are members of the Stockbridge Munsee Community. Other Munsee people joined communities comprised primarily of people from southern New Jersey and Pennsylvania who spoke the Unami dialect of the Delaware language. These combined Delaware communities migrated westward and eventually settled in Oklahoma. Today descendants of these communities are members of the Delaware Nation, Oklahoma or the Delaware Tribe of the Cherokee Nation, Oklahoma.

Officials of Delaware Water Gap National Recreation Area have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 76 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of Delaware Water Gap National Recreation Area also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

When consultation was initiated, the Delaware Tribe of Indians, Oklahoma was Federally recognized. During consultations, court rulings determined that the Delaware Tribe cannot be recognized as a separate entity from the Cherokee Nation and that the Delaware Tribe is a part of the Cherokee Nation, Oklahoma. A cultural affiliation determination was made with the Delaware Tribe of Indians, Oklahoma prior to its change in status. This determination is reflected in this notice as affiliation with the Cherokee Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact John J. Donahue, Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324, telephone (570) 426–2418, before December 5, 2008. Repatriation of the unassociated funerary objects to the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

Delaware Water Gap National Recreation Area is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: October 21, 2008

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–26353 Filed 11–4–08; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Delaware Water Gap National Recreation Area, Bushkill, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of the Interior, National Park Service, Delaware Water Gap National Recreation Area, Bushkill, PA. The

human remains and associated funerary objects were removed from sites in Monroe County, PA; Pike County, PA; Warren County, NJ; and Sussex County, NJ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Delaware Water Gap National Recreation Area.

A detailed assessment of the human remains and associated funerary objects was made by Delaware Water Gap National Recreation Area professional staff in consultation with representatives of the Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma (now part of the Cherokee Nation, Oklahoma); and Stockbridge Munsee Community, Wisconsin. When consultation was initiated, the Delaware Tribe of Indians, Oklahoma was Federally recognized. During consultations, court rulings determined that the Delaware Tribe cannot be recognized as a separate entity from the Cherokee Nation and that the Delaware Tribe is a part of the Cherokee Nation, Oklahoma. The Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; and Shawnee Tribe, Oklahoma were invited to consult, but declined to participate.

In 1962, Congress passed a bill authorizing the U.S. Army Corps of Engineers to construct a dam on the Delaware River in the vicinity of the Delaware Water Gap. Archeological mitigation began that same year in advance of the dam construction. The Delaware Water Gap National Recreation Area was established in 1965, but the dam was never constructed. The land and collections from the recreation area were transferred to the National Park Service in 1978.

In 1962 and 1963, human remains representing a minimum of 14 individuals were removed during legally authorized excavations at the Pahaquarra site (28Wa06) in Warren County, NJ. The excavations were conducted by the New Jersey State Museum under the direction of Patricia Marchiando and supervised by William Sloshberg. No known individuals were identified. The 378 associated funerary objects are 6 bags and 2 fragments of non-human bone; 3 bags of shell; 1 bag of charred beans; 7 bags of charcoal; 2 bags of charred nutshell; 1 bag of unidentified organic material; 6 projectile points or projectile point fragments (Archaic, Middle Woodland, Late Woodland); 9 untyped projectile point fragments; 1 untyped biface fragment; 7 scraper or scraper fragments; 26 flakes or flake fragments; 1 core fragment; 1 chert nodule; 1 piece of debitage; 2 hammerstones; 1 mano; 6 netsinkers; 1 pestle; 8 worked stone and worked stone fragments; 1 stone fragment; 2 pebble or pebble fragments; 1 bag and 15 pieces of fire-cracked rock; 253 Late Woodland sherds; 10 fragments of native-made ceramic pipes; 1 turtle shell vessel; and 3 quartz crystal fragments.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The burial styles and diagnostic associated funerary objects, including a Syracuse Lawson sherd, Owasco Corded pottery, and two Levanna points, indicate that these human remains were buried during the Late Woodland Period (A.D. 1000–1650). The presence of Poplar Island, Eshback, Brewerton, and Fox Creek projectile points is due to the disturbance of Archaic and Middle Woodland features during the Late Woodland Period. Tribal representatives have indicated that the presence of artifacts from earlier periods is intentional, resulting from the act of burial, and have identified all objects in the soil matrix surrounding a burial as associated funerary objects.

In 1972, human remains representing a minimum of two individuals were removed from the Pahaquarra site (28Wa06) in Warren County, NJ, during legally authorized excavations by Seton Hall University under the direction of Herbert Kraft. No known individuals were identified. The 4,564 associated funerary objects are 1 bag of bark wrapping fragments; 4 pieces of charred hickory nutshell; 1 biface fragment; 4,419 glass trade beads (including white, green, yellow or blue seed beads; white wire-wound round beads; blue or red faceted beads; blue or white barrel-shaped ''imitation wampum''; blue drawn disc-shaped beads; and a round black bead); 8 runtees and runtee fragments; 38 shell hair pipes and fragments of shell hair pipes; 28 rings or ring fragments (some simple brass bands, some Jesuit, one with a glass bead ''jewel'' insert); 1 King George medal; 3 clasp knives; 1 sheath knife; 1 latch and handle from a ''jewel box''; 2 pairs of scissors; 45 coffin nails; 3 lead baling seal fragments; 1 unidentified metal fragment with beads adhering to it; 1 needle and nail fused together; 1 mirror fragment; 1 soil sample; 1 bag of bark, organic material and seed beads; 1 bag of wood fragments; 1 bag of wood fragments and vermillion; and 2 bags of vermillion.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The associated funerary objects date these burials to the Historic Period (circa A.D. 1650–1750). The lead baling seals, clasp knife, seed beads and blue faceted glass beads suggest that one burial dates to the early 18th century. The King George medal, Jesuit rings, seed beads, wire-wound white beads, and blue faceted beads suggest that the second burial dates between A.D. 1714 and circa 1740.

In 1964, 1968 and 1972, human remains representing a minimum of four individuals were removed from the Faucett site (36Pi13A) in Pike County, PA, during legally authorized excavations by Dr. Fred Kinsey of Franklin and Marshall College. No known individuals were identified. The four associated funerary objects are one untyped Late Woodland rimsherd, one lithic fragment, and two flotation samples.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. In the site report, Kinsey identified these human remains as being from Late Woodland Period burials (A.D. 1000–1650). Diagnostic ceramics and the style and depth of the burials support this interpretation.

In 1965, human remains representing a minimum of one individual were removed from the Friedman II site (28Sx16) in Sussex County, NJ, during legally authorized excavations by the New Jersey State Museum, supervised by Patricia Marchiando. No known individual was identified. The three associated funerary objects are one white clay pipe, one pestle fragment, and one flat stone.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The white clay pipe contains diagnostic features of Dutch pipes and dates to the 17th century.

In 1965, human remains representing a minimum of three individuals were removed from the Friedman Knoll (Friedman I) site (28Sx12), Sussex County, NJ, during legally authorized excavations by the New Jersey State Museum, supervised by Patricia Marchiando. No known individuals were identified. The 16 associated funerary objects are 12 coffin nails, 1 iron belt buckle, 1 scraper, 1 untyped side-notched point, and 1 untyped stemmed point.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The nails and belt buckle

date one burial to the Historic Period (circa A.D. 1650–1750) when coffin burials were quickly adopted by some Native Americans living in the Upper Delaware Valley. The teshoa (not in the collection) found with another burial suggests that it dates to the Late Woodland or early Historic Period (A.D. 1000–1750). The shallow depth of the third burial suggests that it dates to the Late Woodland Period (A.D. 1000–1650).

In 1966, human remains representing a minimum of two individuals were removed from the Peters-Albrecht Lower Terrace site (36Pi21) in Pike County, PA, during legally authorized excavations by Fred Kinsey of Franklin and Marshall College. No known individuals were identified. The 295 associated funerary objects are 1 shell fragment; 3 pieces and 1 bag of charcoal; 3 projectile point fragments; 2 biface fragments; 262 flakes; 3 core fragments; 1 cobble or honing stone; 1 netsinker; 3 pieces of fire-cracked rock; 9 untyped Late Woodland sherds; and 6 Early Woodland sherds.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. Burial styles indicate that the remains were buried during the Late Woodland Period (A.D. 1000–1650). One burial intruded into Early Woodland and Archaic Period components; as a result Lackawaxen point fragments and Vinette I sherds were incorporated into the grave. Tribal representatives have indicated that the presence of artifacts from earlier periods is intentional, resulting from the act of burial, and have identified all objects in the soil matrix surrounding a burial as associated funerary objects.

In 1967 and 1968, human remains representing a minimum of six individuals were removed from the Bell Browning site (28Sx19) in Sussex County, NJ, during legally authorized excavations by the New Jersey State Museum, under the direction of Patricia Marchiando. No known individuals were identified. The 269 associated funerary objects are 2 bags and 6 fragments of non-human bone; 1 shell fragment; 34 fragments of bone beads; 20 turtle shell fragments; 1 knife fragment; 1 scraper; 5 hammerstones and hammerstone fragments; 1 chopper; 2 worked stone fragments; 7 core fragments; 1 cobble fragment; 3 pebbles and pebble fragments; 1 quartz crystal; 171 Late Woodland sherds; 9 red glass beads; 1 white glass bead; 1 white clay pipe stem fragment; 1 brass pot; and 1 pan cover and frizzen.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The brass pot, pan cover and frizzen, and glass beads date one burial to the Historic Period (circa A.D. 1650–1750). The presence of Owasco Platted sherds in one burial and the flexed positions of other burials indicate that they date to the Late Woodland Period (A.D. 1000–1650).

In 1969, human remains representing a minimum of five individuals were removed from the Bell-Browning-Blair site (28Sx19) in Sussex County, NJ, during legally authorized excavations by the New Jersey State Museum, directed by Patricia Marchiando. No known individuals were identified. The three associated funerary objects are one Owasco Platted rimsherd and two untyped Late Woodland sherds.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The flexed burial positions and diagnostic artifacts—Owasco Platted rimsherd, untyped Late Woodland sherds, and a Levanna point (not in the collection)—indicate that the human remains were buried during the Late Woodland Period (A.D. 1000–1650).

Between 1970 and 1971, human remains representing a minimum of three individuals were removed from the Harry's Farm site (28Wa2) in Warren County, NJ, during legally authorized excavations by Seton Hall University, under the direction of Herbert Kraft. No known individuals were identified. No associated funerary objects are present.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The flexed burial positions and shallow depth of burials indicate that the remains were buried during the Late Woodland Period (A.D. 1000–1650).

In 1974, one associated funerary object was removed from the Minisink site (28Sx48) in Sussex County, NJ, during legally authorized excavations by Herbert Kraft. The associated funerary object is part of a bark wrapping. It was discovered in an unexcavated portion of a burial that had been excavated in 1894 by an amateur archeologist, Dr. Dalrymple. According to Dalrymple's notes, the burial contained the remains of a child who was interred with a brass chain and glass beads. Historic documents record the use of bark mats to wrap remains before their interment. The fragment of the bark mat is considered an associated funerary object by statutory definition, i.e., it was made exclusively for funerary purposes. The chain and beads discovered in the burial by Dalrymple and the burial style date it to the Historic Period (circa A.D. 1650–1750).

In 1974, human remains representing a minimum of one individual were removed from the Michaels Number 4 site (36Mr40) in Monroe County, PA, during legally authorized excavations by Franklin and Marshall College under the direction of Fred Kinsey. No known individual was identified. The 33 associated funerary objects are 4 pieces of carbonized wood; 1 piece of carbonized hickory nutshell; 1 celt fragment; 1 metate fragment; 14 flakes; and 12 untyped Late Woodland sherds.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. The site report from the excavations identifies the burial as a Late Woodland Period (A.D. 1000–1650) feature. The grit tempering of the ceramics supports this interpretation.

In 1975, human remains representing a minimum of one individual were removed from the Medwin Knoll site (28Sx266) in Sussex County, NJ, during legally authorized excavations by the New Jersey State Museum, under the direction of Dr. Lorraine Williams. No known individual was identified. No associated funerary objects are present.

Osteological assessment of the human remains and their archeological context confirm that these remains are Native American. Williams identified the feature in which the remains were recovered as part of the Minisink phase (A.D. 1350–1650) of the Late Woodland Period (A.D. 1000–1650).

Archeological evidence indicates that the people living in the Upper Delaware Valley formed a distinct group with unique stone tool traditions, bone tool traditions, settlement patterns, subsistence patterns, and burial styles as early as A.D. 1000. Continuity in the artifact styles, settlement and subsistence patterns, and burial styles suggest that the same people remained in the Upper Delaware Valley throughout the Late Woodland Period (A.D. 1000–1650) and into the Historic Period (circa A.D. 1650–1750). Historic records from the 17th and 18th centuries refer to the inhabitants of the Upper Delaware Valley, including Delaware Water Gap National Recreation Area, as ''Minisink.'' Linguistic information indicates that these people spoke the Munsee dialect of the Delaware language. During consultations, tribal representatives identified the Upper Delaware Valley as the traditional territory of the Lenape, or the Delaware-speaking people. As their traditional lands were sold, some Munsee people joined the Stockbridge Mohican in Massachusetts and New

York and remained with them when the community resettled in Wisconsin. Today their descendants are members of the Stockbridge Munsee Community. Other Munsee people joined communities comprised primarily of people from southern New Jersey and Pennsylvania who spoke the Unami dialect of the Delaware language. These combined Delaware communities migrated westward and eventually settled in Oklahoma. Today descendants of these communities are members of the Delaware Nation, Oklahoma or the Delaware Tribe of the Cherokee Nation, Oklahoma.

Officials of Delaware Water Gap National Recreation Area have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 42 individuals of Native American ancestry. Officials of Delaware Water Gap National Recreation Area also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 5,566 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Delaware Water Gap National Recreation Area have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin.

A cultural affiliation determination was made with the Delaware Tribe of Indians, Oklahoma prior to its change in status. This determination is reflected in this notice as affiliation with the Cherokee Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John J. Donahue, superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324, telephone (570) 426–2418, before December 5, 2008. Repatriation of the human remains and associated funerary objects to the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

Delaware Water Gap National Recreation Area is responsible for notifying the Cherokee Nation, Oklahoma; Delaware Nation, Oklahoma; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: October 21, 2008.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E8–26350 Filed 11–4–08; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–582]

In the Matter of: Certain Hydraulic *Excavators* and Components Thereof; Notice of Commission Decision To Review the Administrative Law Judge's Final Initial Determination; Schedule for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's (''ALJ'') final initial determination, Order No. 67, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jonathan Engler, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On August 29, 2006, the Commission instituted this investigation, based on a complaint filed by Caterpillar Inc. (''Caterpillar'') of Peoria, Illinois. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hydraulic excavators and components thereof by reason of infringement of U.S. Trademark Registration No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, and U.S. Trademark Registration No. 2,448,848. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint named twenty one (21) firms as respondents. The complainant requested that the Commission issue a general exclusion order and cease and desist orders. Two respondents, Barkley Industries LLC (''Barkley'') and Frontera Equipment Sales (''Frontera''), have been found in default. Nineteen respondents have been terminated as a result of settlement agreements.

On September 9, 2008, the ALJ issued an initial determination, Order No. 67, granting Caterpillar's motion for summary determination concerning violations of section 337. He also issued his recommended determinations on remedy and bonding. No petitions for review of the initial determination were filed. On October 8, 2008, the Commission extended the date for determining whether to review the initial determination until October 30, 2008.

The Commission has determined to review Order No. 67. The Commission requests briefing by the parties, based on the record, on the following questions:

1. Has Caterpillar rebutted the presumption established by the U.S. Court of Appeals for the Federal Circuit in *Bourdeau Bros., Inc.* v. *International Trade Commission,* 444 F.3d 1317 (Fed. Cir. 2006), that its official U.S. dealers had apparent authority to sell gray market hydraulic excavators in the United States? If not, could Caterpillar rebut the presumption if given the opportunity to supplement its motion for summary determination of no violation? For background concerning the Commission's analytical approach in gray market cases, please refer to the Commission Opinion in *Certain Agricultural Vehicles and Components Thereof,* Inv. No. 337–TA–487 (Aug. 25, 2008).

2. Did any of Caterpillar's overseas affiliates, subsidiaries, and/or official dealers sell gray market hydraulic excavators to or in the United States? If so, has Caterpillar rebutted, or if given the opportunity could Caterpillar rebut, the presumption that these dealers had actual or apparent authority to sell these excavators in the United States? Also, how many gray market sales were made to or in the United States by

Caterpillar's overseas affiliates, subsidiaries, and official dealers?

3. Does the record indicate the total quantity of gray market sales made in the United States from 2000 to 2006? If not, could Caterpillar provide this information if given the opportunity to supplement its motion for summary determination of no violation?

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submission on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determinations on remedy and bonding which were made by the ALJ in Order No. 67. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the HTSUS numbers under which the accused products are imported. Written submissions and proposed remedial orders must be filed no later than close of business on Tuesday, November 18, 2008. Reply submissions must be filed no later than the close of business on Tuesday, November 25, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof with the Office of the Secretary on or before the aforementioned deadlines. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16 and 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.16; 210.42–46).

Issued: October 30, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26319 Filed 11–4–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–652]

In the Matter of Certain Rubber Antidegradants, Antidegradant Intermediates and Products Containing the Same; Notice of Commission Determination Not To Review an Initial Determination of the Administrative Law Judge Granting Sinorgchem's Summary Determination Motion and Kumho's Summary Determination Motion; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination of the presiding administrative law judge granting respondents' summary determination motions in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On July 10, 2008, the Commission instituted this investigation based upon a complaint filed on behalf of Flexsys America L.P. (St. Louis, Missouri) (''Flexsys''). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain rubber antidegradants, antidegradant intermediates, and products containing the same that infringe claims 61–74 of U.S. Patent No. 5,453,541 (''the '541 patent'') and claims 23–28 of U.S. Patent No. 5,608,111 (''the '111 patent''). 73 *FR* 39719 (July 10, 2008). The complaint named as respondents Sinorgchem Co., Shandong (Shandong, China) (''Sinorgchem''), Korea Kumho Petrochemical Co., Ltd. (Seoul, South Korea), Kumho Tire USA, Inc. (Rancho Cucamonga, California), and Kumho Tire Co., Inc. (Seoul, South Korea). (The last three respondents are referred to collectively as ''Kumho.'') The Commission in its notice of institution noted that the ALJ might wish to consider whether the claims asserted in this investigation were precluded by prior litigation. 73 *FR* 39719.

On July 29, 2008, Sinorgchem moved for summary determination and dismissal of this investigation as to Sinorgchem, stating that Flexsys's claims in the complaint for this investigation represent improper claim splitting as to the '111 patent and claim preclusion as to the '541 patent. On July 31, 2008, Kumho moved for summary determination that Flexsys is also precluded from re-litigating its '111 and '541 patents against Kumho. The Commission investigative attorney filed responses on August 4 and 5, 2008, respectively in support of Sinorgchem and Kumho. Flexsys filed a response in opposition on August 4, 2008. The ALJ heard argument at a preliminary conference on August 5, 2008.

On August 8, 2008, the ALJ issued Order No. 6, asking the parties to respond to certain questions. On August 15, 2008, Sinorgchem and Kumho each filed submissions. On August 22, 2008, Flexsys filed a response. On August 28, 2008, Sinorgchem filed a supplemental response. On August 29, 2008, the Commission investigative attorney filed a submission. On September 3, 2008, Flexsys filed a surreply.

On September 15, 2008, the ALJ issued the subject ID (Order No. 9), granting the motions for summary determination and terminating the investigation in its entirety.

On September 29, 2008, Flexsys filed a petition for review of the subject ID. On October 6, 2008, Sinorgchem, Kumho, and the Commission investigative attorney filed responses opposing the petition.

Having examined the relevant portions of the record in this investigation, including the ID, the petition for review, and the responses thereto, the Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: October 30, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26316 Filed 11–4–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–459 and 731–TA–1155 (Preliminary)]

Commodity Matchbooks From India

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and antidumping duty investigation and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping duty investigations Nos. 701–TA–459 and 731–TA–1155 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) and section 733(a) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of commodity matchbooks, provided for in subheading 3605.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India,[1] and that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)) or 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in these cases by December 15, 2008. The Commission's views are due at Commerce within five business days thereafter, or by December 22, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

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

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on October 29, 2008, by D.D. Bean & Sons Co., Jaffrey, NH.

Participation in the Investigations and Public Service List.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the

[1] Commodity matchbooks contain paper match stems which are stitched, stapled, or otherwise fastened into a matchbook cover of any material.

APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 17, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than November 13, 2008, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 20, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 30, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26320 Filed 11–4–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–501]

Textile and Apparel Imports From China: Statistical Reports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on October 9, 2008, from the Committee on Ways and Means of the U.S. House of Representatives (Committee) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–501, *Textile and Apparel Imports from China: Statistical Reports.*

DATES: *December 1, 2008:* Submission of first report, including compilation of historical data.

Every 2 weeks: Statistical reports sent to the Committee every 2 weeks thereafter and posted on the Commission's Web site.

Annually: Publication of a compilation of monthly Census data.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. Any written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project leader Donald Sussman (202–205–3331 or *donald.sussman@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In its letter the Committee noted that the U.S.-China Memorandum of Understanding (MOU) Concerning Trade in Textile and Apparel Products expires on December 31, 2008. The Committee noted that the United States, in entering into the agreement in November 2005, sought to provide a more stable and predictable trading environment. The Committee expressed concern that a market disrupting surge in textile and apparel imports from China could occur after the MOU expires.

In order that the Committee might have accurate and timely information regarding the imports, the Committee requested that the Commission provide statistical reports every 2 weeks on the volume, value, unit value, and import market share of certain textile and apparel imports from China. Specifically, the Committee asked that the Commission compile these data for each product covered by the MOU at both the three-digit textile/apparel category level and at the 10-digit Harmonized Tariff Schedule level for each product within each of the three-digit textile/apparel categories. The Committee asked that the Commission, to the extent practicable and within a reasonable time after data become available, provide the Committee with preliminary Customs data once every 2 weeks and that the Commission post these reports on its Web site. The Committee also asked that the Commission include updated final Census data in the appropriate report when they become available. The Committee stated that it is not, at this time, requesting any analysis of the data, but rather is seeking the statistical data that will allow it to monitor the volume and unit values of textile and apparel imports from China to determine whether a more comprehensive investigation is appropriate. The Committee noted that the data the Commission provides already will have been compiled and

available, and said that it is simply asking that they be reported in the format requested.

As requested by the Committee, the Commission will provide its first report by December 1, 2008, and this first report will include a historical compilation of the volume, value, unit value, and import market share of the articles specified above dating from January 1, 2003, to the most recent month available. As requested, the Commission will subsequently provide the Committee with reports as the preliminary and final data become available, and will publish a compilation of monthly Census data on an annual basis. The Committee asked that the Commission continue to provide these reports until such time that the Committee terminates or amends the request.

The Committee has requested that the Commission make its reports available to the public either on its Web site or in a published version. Consequently, the reports that the Commission sends to the Committee and posts on its Web site will not contain any confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing its report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: October 31, 2008.

Marilyn R. Abbott,

Secretary.

[FR Doc. E8–26362 Filed 11–4–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1140–1142 (Final)]

Uncovered Innerspring Units From China, South Africa, and Vietnam

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

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

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective July 30, 2008, the Commission established a revised schedule for the conduct of the final phase of the subject investigations (73 FR 49219, August 20, 2008). The Commission has decided to revise its schedule with respect to the date for its final release of information and the date for final party comments. The Commission will make its final release of information on November 14, 2008 and final party comments are due on November 18, 2008.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 30, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26314 Filed 11–4–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division

[OMB Number 1105–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of information collection under review: Extension of a currently approved collection; Claim for Damage, Injury, or Death.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 5, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Claim for Damage, Injury, or Death.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* CIV SF 95. Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Not-for-profit institutions, and State, Local, or Tribal Governments. *Abstract:* This form is utilized by those persons making a claim against the United States Government under the Federal Tort Claims Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there

will be 100,000 respondents who will each require 6 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 600,000 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: *October 30, 2008.*

Lynn Bryant,

Department Clearance Officer, PRA United States Department of Justice.

[FR Doc. E8–26324 Filed 11–4–08; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Modification Under the Clean Water Act

In accordance with Department of Justice Policy, 28 U.S.C. 50.7, notice is hereby given that, on October 12, 2008, a proposed Modification of Consent Decree in *United States, et al.* v. *City of Nashua, New Hampshire*, Civil Action No. 1:05–cv–00376–PB, was lodged with the United States District Court for the District of New Hampshire.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), filed a Complaint against the City of Nashua alleging violations of the Clean Water Act concerning the City's current or former combined sewer outfall (''CSO'') facilities. Under the terms of the Consent Decree, the City undertook the implementation of a CSO abatement plan with a completion date of August 2012. The mitigation measures are extensive, requiring completion of the separation of combined sanitary and storm water systems over a large section of the City; the design and construction of wet-weather bypass systems; the design and construction of new outfalls with screening and detention ponds in multiple locations; the design and construction of disinfection facilities; and substantial system-wide infrastructure improvements.

The proposed Consent Decree Modification requires the City to abide by the implementation compliance measures specified in the 2005 Consent Decree with the exception that the deadlines for the evaluation, design, and construction of compliance measures for CSOs 005/006 are extended to allow the study, design, and completion of construction of alternative compliance measures for CSOs 005/006 by August 1, 2015, instead of February 2011. These modifications are required due to higher levels of storm water flow discovered by field testing and resulting substantial increased costs under the current design of the 005/006 facilities.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.endrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *City of Nashua, New Hampshire*, D.J. Ref. 90–5–1–1–08193.

The Consent Decree Modification may be examined at the Office of the United States Attorney, District of New Hampshire, 53 Pleasant Street, Fourth Floor, Concord, New Hampshire 03301, and the U.S. Environmental Protection Agency, Region I (New England Region), One Congress Street, Boston, Massachusetts 02114. During the public comment period, the Consent Decree Modification may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree Modification may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.25 (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.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Div.

[FR Doc. E8–26313 Filed 11–4–08; 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—American Society of Mechanical Engineers

Notice is hereby given that, on October 3, 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''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, since June 30, 2008, ASME has published three new standards and initiated twelve new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, ASME 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 October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on July 2, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 2008 (73 FR 43951).

Patricia A. Brink,

Deputy Director of Operations Antitrust Division.

[FR Doc. E8–26327 Filed 11–4–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Immigration Practitioner Complaint Form.

The Department of Justice (DOJ), Executive Office for Immigration

Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 5, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; *telephone:* (703) 305–0470.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–44, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. *Other:* None. *Abstract:* The information on this form will be used to determine whether or not, assuming the truth of the factual allegations, the Office of General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete the form annually with an average of two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1000 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 30, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–26325 Filed 11–4–08; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0008]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 5, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John N. Blum, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041; *telephone:* (703) 305–0470. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–45, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* A party who appeals a practitioner disciplinary decision by the adjudicating official to the Board of

Immigration Appeals (Board). *Other:* None. *Abstract:* Once the adjudicating official issues a practitioner disciplinary decision, either party or both parties may appeal the decision to the Board for *de novo* review of the record, pursuant to 8 CFR 1003.106(c).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will complete the form annually with an average of one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 50 total burden hours associated with this collection annually.

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 30, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–26326 Filed 11–4–08; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of an open ACA meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of an open meeting of the Advisory Committee on Apprenticeship (ACA).

TIMES AND DATES: The meeting will begin at approximately 1 p.m. on Monday, November 17, and continue until approximately 5 p.m. The meeting will reconvene on Tuesday, November 18, at approximately 8:30 a.m. and continue until approximately 5 p.m. The meeting will begin at approximately 8:30 a.m. on Wednesday, November 19 and adjourn at approximately 12 p.m.

Place: Loews L'Enfant Plaza, 480 L'Enfant Plaza, SW., Washington, DC, (202) 484–1000.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. John V. Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration (ETA), U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Matters To Be Considered

The agenda will focus on the following topics:

- Regulatory Updates.
- Office of Apprenticeship Updates.
- Integration and Partnerships with Registered Apprenticeship.
- Shared Vision for the Future of the Registered Apprenticeship System.

Status

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Ms. Kenya Huckaby at (202) 693–3795 no later than Monday, November 10, 2008, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending the data or comments to Mr. John V. Ladd, Administrator, Office of Apprenticeship, U.S. Department of Labor, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210. Such submissions should be sent by Monday, November 10, 2008, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. John V. Ladd, by Monday, November 10, 2008. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 30th day of October 2008.

Brent R. Orrell,

Deputy Assistant Secretary for Employment and Training Administration.

[FR Doc. E8–26363 Filed 11–4–08; 8:45 am]

BILLING CODE 4510–FR–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8610; License No. STC–1333; EA–07–164]

In the Matter of Stepan Company Maywood, New Jersey; Confirmatory Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the Public of the issuance of a Confirmatory Order Modifying License No. STC–1333, held by the Stepan Company (Stepan or Licensee). The Order set forth below was issued to the Licensee on October 21, 2008, and includes an opportunity to request a hearing. Although the Order indicates any person adversely affected by the Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance, the public has 20 days from the publication of the Order in the **Federal Register**, in which to request a hearing.

FOR FURTHER INFORMATION CONTACT: Amir Kouhestani, Project Manager, Special Projects Branch, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. *Telephone:* (301) 415–0023; *fax number:* (301) 415–5369; *e-mail; amir.kouhestani@nrc.gov*.

I

Stepan Company (Stepan or Licensee) is the holder of U.S. Nuclear Regulatory Commission (NRC or Commission) License No. STC–1333 (License) issued by the NRC pursuant to 10 CFR Part 40. The License authorizes Stepan to possess thorium tailings in underground storage in three burial pits at Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey. The license was issued on April 4, 1978, was most recently amended on November 5, 1987, and remains in effect. This possession only license is in timely renewal.

II

In accordance with the ''Settlement Agreement—United States and Stepan Company,'' dated November 12, 2004, on-site decontamination and remediation of the burial pits will be performed by the U.S. Army Corps of Engineers (USACE), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP), and pursuant to the Energy and Water Development Appropriations Acts for Fiscal Years 1998–2001 (Pub. L. Nos. 105–62, 105–245, 106–60, and 106–377,

respectively). Section 611 of Public Law 106–60 requires USACE to remediate FUSRAP sites in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERLCA), 42 U.S.C. 9601 *et seq.*, and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300. USACE, as provided for in section 121(e) of CERCLA and 40 CFR 300.400(e), is not required to obtain an NRC license for its on-site remediation activities conducted under its CERCLA authority.

In accordance with Article III of the ''Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities,'' 66 FR 36606 (July 12, 2001), at the request of USACE, NRC will initiate action for the suspension of Stepan's License or portions thereof, contingent upon USACE notifying NRC in writing, at least 90 days prior to USACE's expected date of initiation of a site response action, that USACE is prepared to take possession of all or part of the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction. Upon taking possession, USACE will be responsible for the protection of the public health and safety from those materials consistent with 10 CFR Part 20, ''Standards for Protection Against Radiation.''

Article III of the Memorandum of Understanding (MOU) further provides that USACE agrees to provide notification to NRC that it is prepared to take possession of the burial pits after USACE issues its final Record of Decision (ROD), and that USACE agrees to remediate the licensed site to meet at least the requirements of CERCLA and 10 CFR 20.1402. USACE issued its ROD for Soil and Buildings at the FUSRAP Maywood Superfund Site, Maywood, New Jersey in August 2003. The NRC has reviewed the ROD and concludes that the planned decommissioning and disposal of the burial materials in an NRC-licensed disposal facility, as proposed in the ROD, are consistent with the applicable provisions of the MOU between NRC and USACE.

Article III of the MOU further provides that NRC licensing action for suspension of the License or portions thereof, will be effective subject to written notification by USACE to NRC that USACE has taken physical possession of the licensed site for purposes of radiation control and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20. Article III further states that USACE has no objection to, and will facilitate, NRC observing USACE in-process remediation activities. Finally, Article III of the MOU provides that following completion of its response action at the site, USACE shall provide NRC with a copy of the CERCLA Administrative Record.

Article III of the MOU provides that NRC will reinstate the License or portions thereof, if USACE no longer controls the FUSRAP-related portion of the site for radiation protection purposes, is no longer proceeding with a response action under CERCLA, or has otherwise completed its response action. Article III of the MOU also provides that USACE will notify NRC in writing, at least 90 calendar days prior to USACE terminating its physical possession for purposes of control of radiation, so that NRC can initiate the process for reinstating the License.

III

By letter dated September 29, 2008, the Licensee agreed that:

1. The Licensee shall provide radiation protection for all material in its possession, whether contained in the three burial pits or elsewhere, as required by 10 CFR Part 20. This provision does not apply to material for which the license is suspended.

2. The License shall be suspended with respect to each burial pit after USACE takes physical possession of the burial pit. License suspension shall be effective upon the date of the written notification to NRC by USACE that it has taken physical possession of the burial pit for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20.

3. *The License shall be reinstated with respect to each burial pit:*

(a) After USACE notifies NRC in writing that USACE intends to terminate its physical possession of the burial pit for the purpose of radiation control; and

(b) After USACE is no longer controlling the FUSRAP-related portion of the burial pit for radiation protection purposes, is no longer proceeding with a response action under CERCLA or has otherwise completed its response action at the burial pit; and

(c) License reinstatement shall be effective when the Licensee reestablishes physical possession of the burial pit. The Licensee shall establish physical possession of the burial pit immediately after USACE vacates the burial pit. Within two business days after the Licensee establishes physical possession of the burial pit, the Licensee shall send written notification to NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

In addition, the Licensee consented to issuance of this Order with the commitments, as described above. The Licensee further agreed that this Order shall be effective upon issuance, and that it waives its right to a hearing with respect to this Order.

Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments as set forth above, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 83, 84, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 40, *it is hereby ordered, effective immediately, that license No. STC–1333 is modified as follows*:

A. The Licensee shall provide radiation protection for all material in its possession, whether contained in the three burial pits or elsewhere, as required by 10 CFR Part 20. This provision does not apply to material for which the License is suspended.

B. The License shall be suspended with respect to each burial pit after USACE takes physical possession of the burial pit. License suspension shall be effective upon the date of the written notification to NRC by USACE that it has taken physical possession of the burial pit for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR Part 20.

C. *The License shall be reinstated with respect to each burial pit:*

(1) After USACE notifies NRC in writing that USACE intends to terminate its physical possession of the burial pit for the purpose of radiation control; and

(2) After USACE is no longer controlling the FUSRAP-related portion of the burial pit for radiation protection purposes, is no longer proceeding with a response action at the burial pit under CERCLA, or has otherwise completed its response action for the burial pit; and

(3) License reinstatement shall be effective when the Licensee reestablishes physical possession of the burial pit. The Licensee shall establish physical possession of the burial pit immediately after USACE vacates the burial pit. Within two business days after the Licensee establishes physical possession of the burial pit, the Licensee shall send written notification to NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 F R 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGSDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or; (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*. Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a

hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 21st day of October 2008.

For the U.S. Nuclear Regulatory Commission.

Charles L. Miller,

Deputy Director, Office of Federal and State Materials, and Environmental Management Programs.

[FR Doc. E8–26375 Filed 11–4–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008; Early Site Permit]

In the Matter of Dominion Nuclear North Anna, LLC, Virginia Electric and Power Company, and Old Dominion Electric Cooperative (ESP for North Anna ESP Site); Order Approving Transfer of Early Site Permit and Conforming Amendment

I.

Dominion Nuclear North Anna, LLC (DNNA) holds Early Site Permit 003 (ESP–003) issued on November 27, 2007, pursuant to Section 52.24 ''Issuance of Early Site Permit,'' of Title 10 of the *Code of Federal Regulations* (10 CFR Section 52.24). The permit expires on November 27, 2027.

II.

Under cover of a letter dated April 24, 2008, DNNA, Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP), and Old Dominion Electric Cooperative (ODEC), submitted an application requesting an order consenting to the transfer of ESP–003 from DNNA to DVP and ODEC. The application also requests approval of a conforming amendment to ESP–003 to delete references to DNNA, reflect DVP and ODEC as the permit holders, and delete certain provisions that are no longer applicable because they applied only to DNNA. According to the application, transfer of the early site permit to DVP and ODEC will allow DVP to take advantage of the incentives and rate treatment afforded under new legislation enacted by the Commonwealth of Virginia to regulated public utilities. DVP is a regulated public utility in Virginia. Additionally, DVP and ODEC are the owners of the North Anna Power Station (NAPS) and DVP is the licensed operator of the existing nuclear units at that site. Further, DVP and ODEC submitted a joint application on November 27, 2007, for a combined license (COL) for a new Unit 3 at NAPS. According to the application, transferring the ESP to DVP and ODEC will consolidate the responsibility for the ESP and the COL application into entities that are seeking a license to own and operate the new unit, and will thus facilitate the licensing process. To effectuate DVP's assumption of responsibilities for activities previously performed by DNNA, DNNA will be merged into DVP with DVP being the surviving entity. DVP will then assume all of DNNA's rights and obligations, including all rights and obligations under the ESP. The merger will become effective after receipt of required regulatory approvals, which include in addition to this Order, approval of the merger by the Virginia State Corporation Commission and the North Carolina Utilities Commission. The applicants requested approval of the transfer of the ESP and conforming amendment pursuant to 10 CFR 52.28, 10 CFR 50.80, and 10 CFR 50.90.

Notice of the request for approval and opportunity for a hearing were published in the **Federal Register** on August 27, 2008 (73 FR 50647). No comments and no requests for hearing or petitions for leave to intervene were received.

Pursuant to 10 CFR 52.28 and 10 CFR 50.80, no ESP, shall be transferred, directly or indirectly, through transfer of control of the ESP to any person, unless the Commission gives its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that DVP and ODEC are qualified to hold ESP–003, and the transfer of ESP–003, as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff has also found that the application for the proposed conforming amendment to the ESP complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; activities at the site will be in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed ESP conforming amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed conforming amendment will not be inimical to the common defense and security or to the health and safety of the public; and issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

The findings set forth above are supported by an NRC safety evaluation dated October 6, 2008.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; 10 CFR 52.28 and 10 CFR 50.80, *it is hereby ordered* that the transfer of the ESP, as described herein, to Virginia Electric and Power Company doing business as Dominion Virginia Power (DVP), and the Old Dominion Electric Cooperative (ODEC) is approved.

It is further ordered that, consistent with 10 CFR 2.1315(b), a conforming amendment that makes changes as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the ESP to reflect the subject permit transfer is approved. The amendment shall be issued and made effective at the time such proposed ESP transfer is completed.

It is further ordered that DVP and ODEC shall inform the Director of the Office of New Reactors in writing of the date of the merger of DNNA into DVP no later than 5 business days prior to the closing of the merger and transfer of the ESP. Should the transfer of the ESP not be completed by October 30, 2009, this Order shall become null and void, provided however, that upon written application and good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this action, see the application dated April 24, 2008, and the safety evaluation dated October 6, 2008, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/*

reading-rm/adams.html. The documents are also available at *http://www.nrc.gov/reactors/new-licensing/esp.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference Staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 30th day of October 2008.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of New Reactors.

[FR Doc. E8–26368 Filed 11–4–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–04781]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials; License No. 21–00182–03, for Unrestricted Release of the Pharmacia & Upjohn Company LLC; Facility in Kalamazoo, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; *telephone:* (630) 829–9871; *fax number:* (630) 515–1259; or by e-mail at *william.snell@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend Byproduct Materials License No. 21–00182–03. This license is held by Pharmacia & Upjohn Company LLC (the Licensee), and authorizes the use of byproduct materials within Building 267 (the Facility), located at 333 Portage Street, Kalamazoo, Michigan. Amendment of the license would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated July 9, 2008 (ADAMS Accession No. ML081920702). The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10 Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The license will be amended following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's July 9, 2008, license amendment request, resulting in release of the Facility for unrestricted use. License No. 21–00182–03 was issued on April 24, 1958, pursuant to 10 CFR Part 30, and has been amended periodically since that time. The license authorizes the use of byproduct materials for conducting research and development.

The Facility is a six-story steel frame building on a 39-acre pharmaceutical research and development campus comprised of offices and laboratories located in a primarily commercial area. The Licensee ceased using licensed materials in the Facility in April 2008, and has conducted final status surveys of the Facility. The results of these surveys along with other supporting information were provided to the NRC to demonstrate that the criteria in Subpart E of 10 CFR Part 20 for unrestricted release have been met.

Need for the Proposed Action

The licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted onsite final status surveys on the Facility during April, May and June 2008. The final status survey report was attached to the Licensee's amendment request dated July 9, 2008. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facility'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed amendment of the license and release of the Facility for unrestricted use is in compliance with 10 CFR Part 20. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material Facility be completed and

approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Michigan Department of Environmental Quality (DEQ) for review on October 1, 2008. By response dated October 9, 2008, the State agreed with the conclusions of the EA, and otherwise provided no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Dee L. Clement, Pfizer, Inc., letter to William Snell, U.S. Nuclear Regulatory Commission, July 9, 2008 (ADAMS Accession No. ML081920702);

2. Dee L. Clement, Pfizer, Inc., letter to William Snell, U.S. Nuclear Regulatory Commission, April 8, 2008 (ADAMS Accession No. ML081010514);

3. Dee L. Clement, Pfizer, Inc., letter to William Snell, U.S. Nuclear Regulatory Commission, March 25, 2008 (ADAMS Accession No. ML080930101);

4. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination'';

5. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions'';

6. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facility'';

7. NUREG–1757, ''Consolidated Decommissioning Guidance.''

8. By response dated October 9, 2008, the State had no comments.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 22nd day of October 2008.

For the Nuclear Regulatory Commission.

Christine Lipa,

Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E8–26361 Filed 11–4–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15c2–7; OMB Control No. 3235–0479; SEC File No. 270–420.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15c2–7 (17 CFR 240.15c2–7) places disclosure requirements on broker-dealers who have correspondent relationships, or agreements identified in the rule, with other broker-dealers. Whenever any such broker-dealer enters a quotation for a security through an inter-dealer quotation system, Rule 15c2–7 requires the broker-dealer to disclose these relationships and agreements in the manner required by the rule. The inter-dealer quotation system must also be able to make these disclosures public in association with the quotation the broker-dealer is making.

When rule 15c2–7 was adopted in 1964, the information it requires was necessary for execution of the Commission's mandate under the Securities Exchange Act of 1934 to prevent fraudulent, manipulative and deceptive acts by broker-dealers. In the absence of the information collection required under Rule 15c2–7, investors and broker-dealers would have been unable to accurately determine the market depth of, and demand for, securities in an inter-dealer quotation system.

There are approximately 5,808 broker-dealers registered with the Commission. Any of these broker-dealers could be potential respondents for Rule 15c2–7, so the Commission is using that figure to represent the number of respondents. Rule 15c2–7 applies only to quotations entered into an inter-dealer quotation system, such as the OTC Bulletin Board (''OTCBB''), or Pink Sheets, operated by Pink OTC Markets, Inc. According to representatives of both Pink Sheets and the OTCBB, neither entity has recently received, or anticipates receiving any

Rule 15c2–7 notices. However, because such notices could be made, the Commission estimates that one filing is made annually pursuant to Rule 15c2–7.

Based on prior industry reports, the Commission estimates that the average time required to enter a disclosure pursuant to the rule is .75 minutes, or 45 seconds. The Commission sees no reason to change this estimate. We estimate that impacted respondents spend a total of .0125 hours per year to comply with the requirements of Rule 15c2–7 (1 notice (×) 45 seconds/notice). The Commission estimates that a typical employee of a broker-dealer charged to ensure compliance with Commission regulations receives annual compensation of $128,960. This compensation is the equivalent of $62.00 per hour ($128,960 divided by 2,080 payroll hours per year). Thus, the Commission estimates that the annual cost burden for compliance with Rule 15c2–7 is $0.78 ($62.00/hour multiplied by 0.0125 hours).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current and valid control number. Written comments are invited regarding: (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 of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of collecting information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your comments to Lewis W. Welker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26389 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28480; File No. 812–13474]

Allianz Life Insurance Company of North America, et al; Notice of Application

October 30, 2008.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'') and an order of exemption pursuant to section 17(b) of the Act from Section 17(a) of the Act.

APPLICANTS: Allianz Life Insurance Company of North America (''Allianz Life'') and Allianz Life Insurance Company of New York (''Allianz NY'') (together the ''Insurance Company Applicants''), their respective separate accounts Allianz Life Variable Account A (''Allianz Account A''), Allianz Life Variable Account B (''Allianz Account B''), and Allianz Life of NY Variable Account C (''Allianz Account C'') (collectively with the Insurance Company Applicants, the ''Applicants''), and Allianz Variable Insurance Products Trust (the ''VIP Trust'' and collectively with the Applicants, the ''Section 17 Applicants'').

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to section 26(c) of the 1940 Act, approving the substitution of certain securities (the ''Substitution'') issued by the Franklin Templeton Variable Insurance Products Trust (''FTVIPT'') and held by Allianz Account A, Allianz Account B, or Allianz Account C (collectively, the ''Separate Accounts'') to support certain variable annuity contracts and variable life insurance contracts (the ''Contracts'') issued by Allianz Life and Allianz NY. The section 17 Applicants seek an order pursuant to section 17(b) of the 1940 Act exempting them to the extent necessary to permit them to engage in certain in-kind transactions in connection with the Substitution.

FILING DATE: The application was filed on January 11, 2008 and amended on October 30, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 24, 2008, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090. Applicants, Allianz Life Insurance Company of North America, 5701 Golden Hills Dr., Minneapolis, MN 55416–1297.

FOR FURTHER INFORMATION CONTACT: Sally Samuel, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

Applicants' and VIP Trust's Representations

1. The Applicants propose to substitute certain classes of shares of the AZL Schroder Emerging Markets Equity Fund (the ''New Fund'') for the corresponding class of shares of the Templeton Developing Markets Securities Fund (the ''Replaced Fund'') currently held by the Separate Accounts. The following table shows the share classes of the New Fund and the Replaced Fund (each, a ''Fund'' and collectively, the ''Funds'') involved in the Substitution:

New fund (adviser/subadviser)	Share classes	Replaced fund (adviser)	Share classes
AZL Schroder Emerging Markets Equity Fund (Allianz Investment Management LLC/ Schroder Investment Management North America Inc.)**.	Class 1 Class 2.*	Templeton Developing Markets Securities Fund (Templeton Asset Management Ltd.).	Class 1. Class 2.*

* A distribution fee is assessed against assets attributable to this class of shares at the annual rate of 0.25% of the average daily net assets attributable to the class.

** Prior to December 10, 2007, the AZL Schroder Emerging Markets Equity Fund was subadvised by OppenheimerFunds, Inc. and was known as the AZL Oppenheimer Developing Markets Fund. Effective December 10, 2007, pursuant to an exemptive order issued to the VIP Trust on September 17, 2002, the VIP Trust replaced OppenheimerFunds, Inc. with Schroder Investment Management North America Inc. as subadviser to the Fund.

2. The New Fund is a series of the VIP Trust, a Delaware statutory trust. The VIP Trust is registered as an open-end management investment company under the 1940 Act (File No. 811–9491) and its shares are registered as securities under the Securities Act of 1933, as amended (the ''1933 Act'') (File No. 333–83423).

3. Shares of the VIP Trust are sold to separate accounts of Allianz Life and Allianz NY for the purpose of funding variable annuity contracts and variable life insurance policies. The New Fund, as well as all other funds offered by the VIP Trust, is managed by Allianz Investment Management LLC (''AZIM''), a wholly owned subsidiary of Allianz Life that was formerly known as Allianz Life Advisers, LLC.

4. The following table shows the inception date and net assets at December 31, 2007 for each class of shares of the New Fund:

New fund	Inception date	Net assets at December 31, 2007
AZL Schroder Emerging Markets Equity Fund		
Class 1	5/6/07	$359,359.
Class 2	5/1/06	$249.2 million.

5. Class 1 and Class 2 shares are substantially identical, except that Class 1 shares are not assessed a 12b–1 fee while Class 2 shares are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets attributable to Class 2 shares, which is the maximum 12b–1 fee permitted under the New Fund's Distribution Plan. Class 1 shares are currently available to owners of certain Contracts that are no longer offered for sale. Class 2 shares are currently available to owners of certain Contracts that are currently offered for sale. Both Class 1 and Class 2 shares are included in the proposed Substitution.

6. Prior to December 10, 2007, the New Fund was subadvised by OppenheimerFunds, Inc. and was known as the AZL Oppenheimer Developing Markets Fund. Effective December 10, 2007, the VIP Trust replaced OppenheimerFunds, Inc. with Schroder Investment Management North America Inc. (''SIMNA'') as the subadviser to the New Fund.

7. The Replaced Fund is a series of FTVIPT. Shares of FTVIPT are registered as securities under the 1933 Act (File No. 033–23493). The Replaced Fund is managed by Templeton Asset Management Ltd., which is not an affiliate of the Insurance Company Applicants.

8. The following table shows the inception date and net assets at December 31, 2007, for each class of shares of the Replaced Fund:

Replaced fund	Inception date	Net assets at December 31, 2007
Templeton Developing Markets Securities Fund		
Class 1	1/1/97	$753.8 million.
Class 2	5/1/97	$1.1 billion.

9. Class 1 and Class 2 shares of the Replaced Fund are currently available under certain Contracts issued by the Insurance Company Applicants. Class 1 and Class 2 shares are substantially identical, except that Class 1 shares are not assessed a 12b–1 fee while Class 2 shares are assessed a 12b–1 fee at an annual rate of 0.25% of average daily net assets attributable to Class 2 shares. Class 1 shares are currently available to owners of certain Contracts that are no longer offered for sale. Class 2 shares are currently available to owners of certain Contracts that are currently offered for sale. Both Class 1 and Class 2 shares are included in the proposed Substitution.

10. Pursuant to a ''manager of managers'' exemptive order issued by the Commission pursuant to section 6(c) of the 1940 Act providing an exemption from section 15(a) of the 1940 Act and Rule 18f–2 under the 1940 Act (Order No. 25734, dated September 17, 2002), AZIM selects and manages subadvisers for the various series of the VIP Trust, subject to the oversight of the Board of Trustees of the VIP Trust, without obtaining shareholder approval (the ''Manager of Managers Order''). The relief granted in the Manager of Managers Order extends to the New Fund. The New Fund is offered to contract owners via a prospectus containing disclosure (1) describing the existence, substance, and effect of the Manager of Managers Order; (2) holding the New Fund out to the public as employing the management structure described in the application for the Manager of Managers Order; and (3) explaining that AZIM has the ultimate responsibility (subject to oversight by the Board of Trustees of the VIP Trust) to oversee the subadvisers and recommend their hiring, termination, and replacement. The New Fund's

prospectus will be provided to each affected contract owner prior to the Substitution.

11. Subaccounts investing in Class 1 shares of the Replaced Fund and Class 1 shares of the New Fund are currently available only to owners of certain Contracts that are no longer offered for sale by the Insurance Company Applicants. Pursuant to the proposed Substitution, the Insurance Company Applicants will replace Class 1 shares of the Replaced Fund held in its subaccounts on the date of the Substitution with Class 1 shares of the New Fund.

12. Subaccounts investing in Class 2 shares of the Replaced Fund and Class 2 shares of the New Fund are currently available to owners of certain Contracts currently offered for sale by the Insurance Company Applicants. Pursuant to the proposed Substitution, the Insurance Company Applicants will replace Class 2 shares of the Replaced Fund held in its subaccounts on the date of the Substitution with Class 2 shares of the New Fund.

13. It is currently anticipated that the Substitution will occur as soon as practicable following receipt of the Order of the Commission requested herein (the ''Substitution Date''). After the Substitution Date, subaccounts investing in the Replaced Fund will no longer be available under the Contracts to any contract owner.

14. Allianz Life is a stock life insurance company organized under the laws of the state of Minnesota in 1896. Allianz NY is a stock life insurance company organized under the laws of the state of New York on September 21, 1982. Allianz Life and Allianz NY are subsidiaries of Allianz SE, a ''Societas Europaea'' or European stock corporation headquartered in Munich, Germany.

15. Allianz Life is the depositor and sponsor of Allianz Account A and Allianz Account B, and Allianz NY is the depositor and sponsor of Allianz Account C. Each of the Separate Account Applicants meets the definition of a ''separate account'' in Rule 0–1(e) under the 1940 Act.

16. Allianz Account A is a segregated asset account of Allianz Life. Allianz Account A was established by Allianz Life on May 31, 1985, under Minnesota insurance laws. Allianz Account A is used to fund certain variable life insurance policies issued by Allianz Life. Allianz Account A is currently divided into a number of subaccounts, each of which invests in a specific underlying registered investment company or portfolio thereof (each an ''Investment Option''). Allianz Account A is registered as a unit investment trust under the 1940 Act (File No. 811–04965). Allianz Life does not currently issue any new Contracts that allow contract owners to invest in any of the subaccounts of Allianz Account A.

17. Allianz Account B is a segregated asset account of Allianz Life. Allianz Account B was established by Allianz Life on May 31, 1985, under Minnesota insurance laws. Allianz Account B is used to fund certain variable annuity contracts issued by Allianz Life. Allianz Account B is divided into a number of subaccounts, each of which invests in a specific Investment Option. Allianz Account B is registered as a unit investment trust under the 1940 Act (File No. 811–05618).

18. Allianz Account C is a segregated asset account of Allianz NY. Allianz Account C was established by Allianz NY on February 26, 1988, under New York insurance laws. Allianz Account C is used to fund certain variable annuity contracts issued by Allianz NY. Allianz Account C is divided into a number of subaccounts, each of which invests in a specific Investment Option. Allianz Account C is registered as a unit investment trust under the 1940 Act (File No. 811–05716).

19. The Contracts are variable annuity contracts and variable life insurance policies. Allianz Life currently issues individual deferred variable annuity contracts and has previously issued immediate variable annuity contracts and variable life insurance policies. Allianz NY issues individual deferred variable annuity contracts offered for sale in New York.

20. Allianz Life Financial Services, LLC (''Allianz Life Financial''), a Minnesota limited liability company and a wholly owned subsidiary of Allianz Life, serves as the principal underwriter of the Contracts. Allianz Life Financial is registered as a broker dealer with the Commission under the Securities Exchange Act of 1934 (the ''1934 Act'') as well as with the securities commissions in the states in which it operates. Allianz Life Financial does not itself sell the Contracts on a retail basis. Rather, Allianz Life Financial enters into selling agreements with other broker-dealers registered under the 1934 Act for the sale of the Contracts. These selling firms include third party broker/dealers and Questar Capital Corporation, an affiliated broker/dealer.

21. Currently, Allianz Life has no effective registration statements for Contracts sponsored by Allianz Account A. The table below shows effective registration statements with the Commission for Contracts sponsored by Allianz Account B that offer the Replaced Fund as an Investment Option:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account B	333–82329	Allianz Alterity (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	333–90260	Allianz High Five (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	333–111049	Allianz High Five Bonus (Class 2 shares).	Variable Deferred Annuity.
Allianz Account B	333–120181	Allianz High Five L (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	333–95729	Allianz Rewards (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	33–23035	Valuemark II (Class 1 shares)	Variable Deferred Annuity.
Allianz Account B	33–72046	Valuemark III (Class 1 shares)	Variable Deferred Annuity.
Allianz Account B	333–06709	Valuemark IV (Class 1 shares)	Variable Deferred Annuity.

22. In addition, Allianz Life has the following registration statements that are effective, but no longer updated, for Contracts sponsored by Allianz Account A and Allianz Account B that are no longer offered for sale (the ''A and B Great Wested Contracts'') but which offer the Replaced Fund as an Investment Option:

Separate account	Registration No.	Contract Name	Type of contract
Allianz Account A	33–11158	Allianz ValueLife (Class 1 shares)	Flexible Premium Variable Universal Life.

Separate account	Registration No.	Contract Name	Type of contract
Allianz Account B	333–63719	USAllianz Charter (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	333–101812	USAllianz Charter II (Class 2 shares)	Variable Deferred Annuity.
Allianz Account B	333–47886	USAllianz Dimensions (Class 2 shares)	Variable Deferred Annuity.
Allianz Account A	333–60206	USAllianz LifeFund (Class 2 shares)	Flexible Premium Variable Universal Life.
Allianz Account B	33–76190	Valuemark Income Plus (Class 1 shares).	Variable Immediate Annuity.
Allianz Account A	33–15464	Valuemark Life (Class 1 shares)	Single Premium Variable Life.

23. Currently Allianz NY has the following effective registration statements with the Commission for Contracts sponsored by Allianz Account C that offer the Replaced Fund as an Investment Option:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account C	333–19699	Allianz Advantage NY (Class 2 shares)	Variable Deferred Annuity.
Allianz Account C	333–105274	Allianz Charter II NY (Class 2 shares)	Variable Deferred Annuity.
Allianz Account C	333–75718	Allianz Opportunity NY (Class 2 shares).	Variable Deferred Annuity.

24. In addition, Allianz NY has the following registration statements that are effective, but no longer updated, for Contracts sponsored by Allianz Account C (the ''C Great Wested Contracts'') that are no longer offered for sale but which offer the Replaced Fund as an Investment Option:

Separate account	Registration No.	Contract name	Type of contract
Allianz Account C	33–26646	Valuemark II NY (Class 1 shares)	Variable Deferred Annuity.
Allianz Account C	333–19699	Valuemark IV NY (Class 1 shares)	Variable Deferred Annuity.

25. The Contracts allow contract owners to allocate premium and contract value among the subaccounts investing in a large number of Investment Options in a wide variety of asset categories that are managed by a large number of asset managers. The exact number of Investment Options available varies somewhat from Contract to Contract, depending on when the Contracts were first offered, whether the Contracts are currently offered for sale, which separate account issued the Contract, product design, and other similar factors. All of the Contracts that are currently offered for sale offer 75 Investment Options. Both the A and B Great Wested Contracts and the C Great Wested Contracts offer a minimum of 34 Investment Options. The number of Investment Options available in the Contracts affected by the Substitution is shown in the Application.

26. Under the Contracts, the Insurance Company Applicants reserve the right, subject to regulatory approval, to substitute one of the Investment Options with another Investment Option after appropriate notice. Moreover, the Contracts permit the Insurance Company Applicants to limit allocation of purchase payments to one or more subaccounts that invest in an Investment Option. The prospectuses or statements of additional information for the Contracts also contain appropriate disclosure of these rights. Thus, subject to regulatory approval, the Contracts permit the Insurance Company Applicants to stop accepting purchase payments into one or more Investment Options and/or to substitute the shares representing an Investment Option held in a subaccount for the shares representing another Investment Option.

27. The proposed Substitution is part of an overall business plan of the Insurance Company Applicants to make their respective products more efficient to monitor and administer and more competitive (both in terms of new sales and the retention of existing business). The Insurance Company Applicants believe that more concentrated and streamlined operations for Investment Options will result in increased operational and administrative efficiencies and economies of scale for the Insurance Company Applicants. In particular, the Insurance Company Applicants feel that concentrating the number of non-affiliated asset managers that advise or subadvise the Investment Options available through the Contracts will simplify the administration of the Contracts with regard to communications with asset managers and contract owners, and simplify the preparation of various reports and disclosure documents. Furthermore, the Insurance Company Applicants feel that by reducing the number of non-affiliated asset managers that manage Investment Options underlying their Contracts and increasing the Investment Options for which AZIM serves as the investment manager, they will increase their ability to effectively manage the Investment Options available to contract owners. Because AZIM operates pursuant to the Manager of Managers Order, the replacement of portfolio managers or subadvisers when appropriate could be effected more efficiently and the need for fund changes that may affect contract owners may be reduced, thereby facilitating appropriate long-term strategic planning for contract owners.

28. For these reasons and the reasons discussed below, the Applicants believe that substituting the New Fund for the Replaced Fund is appropriate and in the best interests of the contract owners.

29. The Insurance Company Applicants believe that the New Fund is an appropriate replacement for the Replaced Fund because its investment objective and principal investment policies are substantially similar to those of the Replaced Fund. In addition, the principal investment risks of the Replaced Fund and the New Fund are substantially similar. Comparisons of the investment objectives, principal investment policies and principal investment risks of the Funds are set forth in the Application.

30. The following chart compares the management fees and the total operating expenses (before and after any waivers and reimbursements) for the year ended December 31, 2007, expressed as an annual percentage of average daily net assets, of the Replaced Fund and the New Fund.

	Templeton developing markets securities fund		AZL schroder emerging markets equity fund	
	Class 1 (percent)	Class 2 (percent)	Class 1 (percent)	Class 2 (percent)
Management Fee	1.23	1.23	*1.23	*1.23
Distribution (12b–1) Fees	0.00	0.25	0.00	0.25
Other Expenses	0.25	0.25	0.48	0.48
Acquired Fund Fees and Expenses	0.00	0.00	0.00	0.00
Total Annual Fund Operating Expenses	1.48	1.73	1.71	1.96
Fee Waiver	0.00	0.00	**0.31	**0.31
Net Annual Fund Operating Expenses	1.48	1.73	**1.40	**1.65

*AZIM and the Fund have entered into a written agreement whereby AZIM has voluntarily reduced the management fee to 0.95% through April 30, 2009.

**AZIM and the AZL Schroder Emerging Markets Equity Fund have entered into a written contract limiting operating expenses to 1.40% and 1.65% for Class 1 and Class 2 shares, respectively through April 30, 2009. AZIM and the AZL Schroder Emerging Markets Equity Fund have agreed to limit Fund operating expenses, net of acquired fund fees and expenses, to an amount not greater than 1.48% and 1.73% for Class 1 and Class 2 shares respectively for 24 months from the date of the Substitution.

31. The following table shows the assets and performance of the Funds for the years shown:

	Net assets (M)			
	At December 31, 2007		At December 31, 2006	
	Class 1	Class 2	Class 1	Class 2
Templeton Developing Markets Securities Fund	$753.8	$1,090.6	$749.1	$857.5
AZL Schroder Emerging Markets Equity Fund*	[1] 0.4	249.2	[1] N/A	[2] 93.7

	Annual total returns			
	2007		2006	
	Class 1 (percent)	Class 2 (percent)	Class 1 (percent)	Class 2 (percent)
Templeton Developing Markets Securities Fund	29.09	28.78	28.43	28.09
AZL Schroder Emerging Markets Equity Fund*	[1] [3] 19.23	30.32	[1] N/A	[2] [4] 8.65

*Prior to December 10, 2007, the AZL Schroder Emerging Markets Equity Fund was subadvised by OppenheimerFunds, Inc. and was known as the AZL Oppenheimer Developing Markets Fund.

[1] Class 1 shares of the AZL Schroder Emerging Markets Equity Fund commenced operations on May 6, 2007.

[2] Class 2 shares of the AZL Schroder Emerging Markets Equity Fund commenced operations on May 1, 2006.

[3] Annualized for the period from commencement of operations on May 6, 2007, through December 31, 2007.

[4] Annualized for the period from commencement of operation on May 1, 2006, through December 31, 2006.

32. Applicants hereby request the Commission's approval to effect the substitution of shares of the New Fund for shares of the Replaced Fund as follows:

- Class 1 shares of the AZL Schroder Emerging Markets Equity Fund for Class 1 shares of the Templeton Developing Markets Securities Fund; and
- Class 2 shares of the AZL Schroder Emerging Markets Equity Fund for Class 2 shares of the Templeton Developing Markets Securities Fund.

33. At the close of business on the Substitution Date, Allianz Life and Allianz NY will each redeem shares of the Replaced Fund held by their Separate Accounts in kind and apply the proceeds of such redemptions to the purchase of shares of the New Fund. Thus, after the Substitution, each subaccount of the Separate Accounts previously holding shares of the Replaced Fund will hold shares of the New Fund.

34. Redemption requests and purchase orders will be placed simultaneously so that redemption of Replaced Fund shares and purchase of New Fund shares will both occur at the price for such shares computed as of the close of business on the Substitution Date in a manner consistent with Rule 22c–1 under the 1940 Act. As a result, the full net asset value of the Replaced Fund shares held by the Separate Account Applicants will be reflected in the contract owners' contract values following the Substitution, without reduction for brokerage or other such fees or charges. All expenses incurred in connection with the Substitution, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by Allianz Life, Allianz NY, or the manager of the New Fund. Accordingly, contract value attributable to contract owners then invested in the Replaced Fund will remain fully invested at all times, and the Substitution will take place at relative net asset value with no change in the amount of any contract owner's contract value, death benefit, or in the

dollar value of his or her investment in the applicable Separate Account.

35. Affected contract owners will not incur any fees or charges in connection with the Substitution so that the net asset value of redeemed shares of the Replaced Fund held by the Separate Account Applicants will be reflected in the contract owners' contract values following the Substitution. Moreover, neither the obligations of the respective Insurance Company Applicants under the Contracts nor the rights of contract owners will be altered in any way by the Substitution. The Substitution will not impose any tax liability or have any adverse tax consequences on contract owners. The Substitution will not cause Contract fees and charges currently being paid by existing owners of Contracts to be greater after the Substitution than they were before the Substitution. For a period of at least 30 days following the Substitution, neither Allianz Life nor Allianz NY will exercise any right it may have under the Contracts to impose restrictions on transfers, except pursuant to any Investment Option allocation restrictions under the Contracts. One exception to this would be restrictions that Allianz Life or Allianz NY may impose to deter or prevent ''market timing'' activities by owners of Contracts or their agents.

36. The Insurance Company Applicants and VIP Trust represent that AZIM and the VIP Trust have entered into a written contract whereby during the 24 months following the Substitution Date, the annualized total net operating expenses, net of any acquired fund fees and expenses, of the New Fund (taking into account applicable fee waivers and expense reimbursements) will not exceed the total net operating expenses, net of any acquired fund fees and expenses, of the Replaced Fund for the fiscal year ended December 31, 2007. In addition, for the 24 months following the Substitution Date, the Insurance Company Applicants will not increase asset-based fees and charges for the Contracts outstanding on the Substitution Date. Thereafter, expenses for the New Fund will vary from year to year and may exceed those of the Replaced Fund.

37. The Insurance Company Applicants mailed a Notice of Substitution (the ''Notice'') to affected contract owner stating that during the period from the date of the Notice through the date 30 days after the Substitution (the ''Free Transfer Period''), the respective Insurance Company Applicants will allow the affected contract owners to make one transfer of contract value held in each subaccount investing in the Replaced Fund (before the Substitution) or New Fund (after the Substitution) to one or more Investment Options available pursuant to the Contracts without charge and without assessing transfer fees. Such a transfer also will not be counted as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge.

38. Under the Manager of Managers Order, subject to the approval of its Board of Trustees, the VIP Trust may retain one or more subadvisers for any of its Funds without the approval of shareholders of the Fund. However, after the Substitution Date, Applicants and VIP Trust represent that the VIP Trust will not retain any new subadviser for the New Fund, or otherwise rely on the Manager of Managers Order in connection with the New Fund, without first obtaining shareholder approval of either: (1) The new subadviser or (2) the New Fund's ability to rely on the Manager of Managers Order.

39. The Notice was mailed to all affected owners on August 11–12, 2008. The Notice informed contract owners of each of the Contracts that the Applicants have filed the Application seeking approval of the Substitution. The Notice set forth the anticipated Substitution Date and advised affected contract owners that contract values allocated to subaccounts investing in shares of the Replaced Fund will be transferred to subaccounts investing in shares of the New Fund, without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge, on the Substitution Date. The Notice also stated that, during the Free Transfer Period, affected contract owners may make one transfer of contract value from each subaccount investing in the Replaced Fund (before the Substitution) or the New Fund (after the Substitution) to one or more other subaccount(s), subject to any Investment Option allocation restrictions under their Contract, without charge and without the transfer counting against any limitations on transfers. Further, prior to the Substitution, all affected contract owners will receive a copy of the most recent prospectus for the New Fund.

40. Within five days following the Substitution, the Insurance Company Applicants will send a written notice to affected contract owners stating that the Substitution was carried out and reiterating the information set forth in the Notice.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act provides as follows: It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. The purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Contract owners will not be assessed charges in connection with the Substitution and their annual fund net total operating expenses are expected to remain the same or decrease. In addition, to the extent a contract owner does not wish to participate in the Substitution, he or she is free to make one transfer to any other option available under the relevant Contract at any time prior to the date of the Substitution or during the 30-day period following the date of the Substitution without any transfer fee and without that transfer counting as a transfer request under any contractual provisions of the Contracts that limit the number of transfers that may be made without charge. Moreover, the Contracts have features that provide adequate protection to contract owners. These features include: (1) A significant number of different Investment Options; (2) Investment Options that are reasonably diversified; (3) Investment Options that are reasonably seasoned; (4) reasonable transferability between Investment Options; (5) investment choices that include an option that is intended to reduce or eliminate fluctuation of principal; and (6) reasonable liquidity in the form of free partial withdrawal rights.

3. In addition, contract owners will be substituted into the New Fund whose investment objective, principal investment policies, and risks will be substantially similar to those of the Replaced Fund, with net total operating expenses that are anticipated to be equal to or less than those of the Replaced Fund after applicable fee waivers and expense reimbursements. Like the Class 1 shares of the Replaced Fund which are not assessed a 12b–1 fee, the corresponding Class 1 shares of the New Fund will not be assessed a 12b–1 fee.

4. The following chart summarizes the similarities and differences between the Replaced Fund and the New Fund:

	Templeton developing markets securities fund	AZL Schroder emerging markets equity fund
Net Total Operating Expenses (12/31/2007)	1.48% (Class 1) 1.73% (Class 2)	1.40% (Class 1). 1.65% (Class 2).
Investment Objectives	Long-term capital appreciation	Capital Appreciation.
Investment Policies (summary)	The Fund invests at least 80% of its net assets in emerging market investments.	The Fund invests at least 80% of its net assets, plus any borrowings for investment purposes, in equity securities of companies the Fund's subadviser believes to be "emerging market" issuers.
Risks	Stock Risk; Value Style Investing; Foreign Securities; Smaller and Midsize Companies; Country, Sector or Industry Focus; Liquidity.	Market Risk; Selection Risk; Capitalization Risk; Foreign Risk; Emerging Markets Risk; Currency Risk; Market Risk; Derivatives Risk; Convertible Securities Risk; Investments in Pooled Vehicles Risk; Liquidity Risk; Initial Public Offerings Risk.
Type of Advisory Services	Managed by Templeton Asset Management Ltd.	Subadvised by Schroder Investment Management North America Inc.
Total Annual Return for period ended December 31, 2007		
Class 1	29.09%	19.23%*.
Class 2	28.78%	30.32%.
Assets Under Management at Dec. 31, 2007		
Class 1	$753.8 million**	$0.4 million****.
Class 2	$1.1 billion**	$249.2 million.

*Annualized for the period from commencement of operations on May 1, 2007 through December 31, 2007.
**Assets held in the Separate Accounts on December 31, 2007, were $85.3 million for Class 1 shares and $268.3 million for Class 2 shares.
***Class 1 shares of the AZL Schroder Emerging markets Equity Fund commenced operations on May 6, 2007.

5. For a period of 24 months from the date of the Substitution, the New Fund (AZL Schroder Emerging Markets Equity Fund)) will be subject to an expense cap limiting the net total operating expenses for the New Fund to a maximum of 1.48% for Class 1 shares and 1.73% for Class 2 shares, respectively. These expense caps are equal to the net total operating expenses for Class 1 and Class 2 shares of the Replaced Fund (Templeton Developing Markets Securities Fund) for the fiscal year ended December 31, 2007. No 12b–1 fees are assessed to Class 1 shares of either the Replaced Fund or the New Fund. Identical 12b–1 fees of 0.25% of average daily net assets are assessed to Class 2 shares of both the Replaced Fund and the New Fund.

6. The investment objectives and policies are substantially similar for both Funds since both generally invest in common stocks of companies in emerging markets. The risks listed are very similar for both Funds and are consistent with the risks generally applicable to investing in emerging market equity funds.

7. In addition to substantially similar investment objectives, principal investment policies and risks, as well as anticipated equal or lower net total operating expenses, the advisory services that are provided to the New Fund by its subadviser are comparable to the types of advisory services currently provided to the Replaced Fund by its investment adviser. Moreover, because the New Fund operates pursuant to the Manager of Managers Order, Applicants believe that the proposed Substitution will provide protection to contract owners by giving AZIM the flexibility to change the subadviser of the New Fund should such a change become warranted or advisable, provided that subsequent to the Substitution, AZIM first obtains shareholder approval of either: (1) The new subadviser or (2) the New Fund's ability to rely on the Manager of Managers Order.

Terms and Conditions of Section 26(c) Relief

1. Applicants submit that the Substitution does not present the type of costly forced redemption or other harms that section 26(c) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act. As noted above, the Substitution is consistent with contract owners' objectives and risk expectations because the investment objective, principal investment policies and risks of the New Fund are substantially similar to those of the Replaced Fund. In addition, the net total operating expenses of the New Fund are anticipated to be equal to or less than those of the Replaced Fund, after applicable fee waivers and expense reimbursements that will be in place for the New Fund for a period of 24 months following the Substitution.

2. As noted above, the Contracts contain features that provide adequate protection to contract owners in the event of a substitution. Moreover, the Substitution will be subject to the following terms and conditions: (1) A contract owner may request that his or her contract value be reallocated to another Investment Option, subject to any Investment Option allocation restrictions under their Contract, at any time during the Free Transfer Period without charge. The Free Transfer Period provides sufficient time for contract owners to reconsider their Investment Options; (2) the Substitution will be at the net asset value of the respective shares, without the imposition of any transfer, brokerage or similar charge; (3) neither the contract owners, the Replaced Fund, nor the New Fund will bear any costs of the Substitution, and all legal, accounting, and transactional costs and any brokerage or other costs incurred in the Substitution will be paid by the Insurance Company Applicants or the manager of the New Fund, and accordingly, the Substitution will have no impact on the contract owners' contract values; (4) the Substitution will in no way alter the contractual obligations of the Insurance Company Applicants or the rights and privileges

of contract owners under the Contracts; and (5) the Substitution will in no way alter the tax benefits to contract owners.

3. The Applicants, on the basis of the facts and circumstances described herein, have determined that it is in the best interests of contract owners to substitute shares of the Replaced Fund with shares of the New Fund.

4. Applicants request an Order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitution on the terms set forth in this Application. Applicants believe, for all of the reasons stated above, that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Section 17(b) Relief

1. The section 17 Applicants also request that the Commission issue an order pursuant to section 17(b) of the 1940 Act exempting them from section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the Substitution through in-kind purchases and sales of the New Fund shares.

2. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above, acting as principal, from purchasing any security or other property from such registered investment company.

3. The Section 17 Applicants may be considered affiliates of the New Fund based upon the definition of ''affiliated person'' in section 2(a)(3) of the 1940 Act. Shares of the funds of the VIP Trust are held solely by the Separate Accounts. Because shares held by a separate account of an insurance company are legally owned by the insurance company, Allianz Life and Allianz NY and their affiliates collectively own of record all of the shares of the funds of the VIP Trust, including the New Fund. Further, AZIM, an affiliated person of the VIP Trust by virtue of section 2(a)(3)(E) of the 1940 Act, is a wholly owned subsidiary of Allianz Life. For these reasons, the VIP Trust and the New Fund are arguably under the control of Allianz Life and Allianz NY notwithstanding the fact that contract owners may be considered the beneficial owners of those shares held in the Separate Accounts. If the VIP Trust and the New Fund are under the control of Allianz Life and Allianz NY, then each of Allianz Life and Allianz NY, or any person controlling Allianz Life and Allianz NY, or any person under common control with Allianz Life and Allianz NY, is an affiliated person of the VIP Trust and the New Fund. Similarly, if the VIP Trust and the New Fund are under the control of Allianz Life and Allianz NY, then the VIP Trust and the New Fund are affiliated persons of Allianz Life and Allianz NY, and of any persons that control Allianz Life and Allianz NY or are under common control with Allianz Life and Allianz NY.

4. At the close of business on the Substitution Date, the Insurance Company Applicants will redeem shares of the Replaced Fund either in-kind or in cash and use the proceeds of such redemptions to purchase shares of the New Fund, with each subaccount of the applicable Separate Account investing the proceeds of its redemption from the Replaced Fund in the New Fund. Thus, the proposed transactions may involve a transfer of portfolio securities by the Replaced Fund to Allianz Life and Allianz NY. Immediately thereafter, Allianz Life and Allianz NY would purchase shares of the New Fund with the portfolio securities received from the Replaced Fund. This aspect of the Substitution may be deemed to involve one or more sales by Allianz Life or Allianz NY of securities or other property to the New Fund, and could therefore be viewed as being prohibited by section 17(a). Accordingly, the section 17 Applicants seek relief from section 17(a) for the in-kind purchases and sales of the New Fund shares. The section 17 Applicants do not believe that the redemption of shares of the Replaced Fund in connection with the Substitution would involve a transaction with a registered investment company of which it is an affiliated person. The redemption of shares of the Replaced Fund will be carried out in accordance with the Signature Financial Group no-action letter (publicly available December 28, 1999).

5. Any in-kind redemptions and purchases for purposes of the Substitution will be effected in a manner consistent with the investment objectives and policies of the Replaced Fund and the New Fund. Subject to the oversight of AZIM, the subadviser of the New Fund will review the securities holdings of the Replaced Fund and determine which of the Replaced Fund's portfolio holdings would be suitable investments for the New Fund in the overall context of the New Fund's investment objective and policies and consistent with its management of the New Fund, and will accept only those securities as consideration for shares that it would have acquired for each such Fund in a cash transaction. The section 17 Applicants represent that these portfolio securities will be of the type and quality that the New Fund would have acquired with the proceeds from share sales had the shares been sold for cash.

6. The section 17 Applicants state that any securities to be paid out as redemption proceeds and subsequently contributed to the New Fund to effect the contemplated in-kind purchases of shares will be valued based on the procedures established by the board of VIP Trust. The redeeming and purchasing values will be the same. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees, or other remuneration will be paid by the Replaced Fund or the New Fund in connection with the in-kind transactions. If AZIM declines to accept particular portfolio securities of the Replaced Fund for purchase in-kind of shares of the New Fund, those positions will be liquidated by the Replaced Fund and shares of the New Fund will be purchased with cash.

7. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records found under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

8. The section 17 Applicants submit that the terms of the Substitution, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7 under the 1940 Act. The use of in-kind transactions will not cause contract owner interests to be diluted. The proposed transactions will take place at relative net asset value in conformity with the requirements of section 22(c) of the 1940 Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. The proposed transaction

cannot be effected at a price that is disadvantageous to either the Replaced Fund or the New Fund. Contract owners will not suffer any adverse tax consequences as a result of the Substitution. Fees and charges under the Contracts will not increase because of the Substitution. Even though they may not rely on Rule 17a–7 under the 1940 Act, the section 17 Applicants submit that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

9. The board of the VIP Trust has adopted procedures, as required by paragraph (e)(1) of Rule 17a–7 under the 1940 Act, pursuant to which the New Fund may purchase and sell securities to and from its affiliates. The section 17 Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the New Fund's procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed Substitution will be such as to offer to the New Fund the same degree of protection from overreaching that Rule 17a–7 provides to the New Fund generally in connection with its purchase and sale of securities under that Rule in the ordinary course of its business. In particular, Allianz Life and Allianz NY (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to the New Fund. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its respective registration statement and as required by Rule 22c–1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. Further, the transactions will be reviewed by the Chief Compliance Officer of the VIP Trust on behalf of the VIP Trust's Board of Trustees and will be reported to VIP Trust's Board of Trustees in the same manner as any other Rule 17a–7 transaction involving the New Fund would be reported.

10. The proposed transactions also are reasonable and fair in that they will be effected in a manner consistent with the public interest and the protection of investors. Contract owners will be fully informed of the terms of the Substitution and they will be provided a prospectus for the New Fund. In addition, contract owners will have the opportunity to make a free transfer from the New Fund to any other available Investment Option offered under their Contract, subject to any Investment Option allocation restrictions under their Contract, during the Free Transfer Period.

11. The section 17 Applicants also submit that the Substitution is consistent with the policies of the Replaced Fund and the VIP Trust as recited in the current registration statement and reports filed under the 1940 Act.

12. In addition, section 17 Applicants submit that the proposed Substitution is consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Securities to be paid out as redemption proceeds from the Replaced Fund and subsequently contributed to the New Fund to effect the contemplated in-kind purchases of shares will be valued in accordance with the requirements of Rule 17(a)–7. Therefore, there will be no change in value to any contract owner as a result of the Substitution.

Conclusion

For the reasons and upon the facts set forth above, the Applicants and the section 17 Applicants believe that the requested order meets the standards set forth in section 26(c) and section 17(b), respectively, and should therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26390 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2806]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is, for nine months, waiving Investment Adviser Registration Depository annual and initial filing fees for all advisers.

DATES: *Effective Date:* The order will become effective on November 1, 2008.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202–551–6737, Daniel S. Kahl, Branch Chief, at 202–551–6730, or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

Discusson

Section 204(b) of the Investment Advisers Act of 1940 (''Advisers Act'') authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation (''FINRA'') as the operator of the Investment Adviser Registration Depository (''IARD'') system. At the same time, the Commission approved, as reasonable, filing fees.[2] The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.[3] Over 11,000 advisers now use the IARD to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. (''NASAA''),[4] and representatives of FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one year period. The Commission concluded that this was

[1] 15 U.S.C. 80b–4(b).

[2] Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA is formerly known as NASD.

[3] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

[4] The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

appropriate and waived annual fees.[5] In 2006, FINRA wrote to the staff again, this time recommending a two-year waiver of all fees to continue to reduce the surplus. The Commission agreed and issued another order waiving all IARD fees.[6] As a result of these two waivers, the surplus was reduced from • million in 2005 to $5 million.

FINRA has again written to Commission staff, recommending that the waiver of annual IARD fees and the waiver of initial IARD filing fees for SEC-registered advisers be extended for an additional nine months to July 31, 2009.[7] Based on projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses for the next nine months, the Commission believes that the current SEC-associated surplus exceeds the amount needed for operations and system enhancements during this period, and accordingly believes that an extension of the current waiver of both annual and initial filing fees through July 31, 2009 is appropriate in order to continue reducing the SEC-associated surplus. This action is expected to waive approximately $4 million in IARD system fees that SEC-registered advisers would incur, and should reduce the SEC-associated surplus to approximately $3.7 million. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2008 through July 31, 2009 and to all initial applications for registration filed by advisers applying for SEC registration from November 1, 2008 through July 31, 2009.

It is therefore ordered, pursuant to sections 204(b) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from November 1, 2008 through July 31, 2009, the fee otherwise due from SEC-registered advisers is waived, and for initial applications to register as an investment adviser with the SEC filed from November 1, 2008 through July 31, 2009, the fee otherwise due from the applicant is waived.

By the Commission.

Dated: October 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26307 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

[5] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005)

[6] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006).

[7] The recommendation to waive fees through July 2009 corresponds to the expiration of the SEC's contract with FINRA to operate the IARD.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58872; File No. SR–BATS–2008–008]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Limitation of Liability

October 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 2008, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. BATS has requested that the Commission waive the 5-day notice requirement and the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[4] If such waivers are granted by the Commission, the Exchange will implement this rule proposal immediately upon commencement of its operations as a national securities 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

The Exchange is proposing to amend BATS Rule 11.16, entitled ''LIMITATION OF LIABILITY,'' to codify that it may provide a form of compensation for losses sustained in relation to an Exchange system failure or a negligent act or omission of an Exchange employee.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *Id.*

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.16 to establish a procedure to compensate Members[5] in relation to Exchange systems failures or a negligent act or omission of an Exchange employee. The Exchange recognizes that the current industry practice of exchanges that function as SROs is to provide a form of compensation for losses sustained in relation to the use of the exchanges' systems, and that some exchanges also provide a form of compensation for negligence by the exchanges' employees. As such, the Exchange seeks to amend BATS Rule 11.16 to conform to current industry practice.

Pursuant to the proposed amendment to Rule 11.16, the Exchange would compensate Members for losses resulting directly from: (i) The malfunction of the Exchange's physical equipment, devices, and/or programming, or (ii) the negligent acts or omissions of the Exchange's employees.[6] Under this proposed rule change, for such malfunctions or negligence, the Exchange would cap its liability: (i) To a single Member at the greater of $100,000 or the amount recovered under any applicable insurance policy on a single trading day, (ii) to all Members at the greater of $250,000 or the amount recovered under any applicable insurance policy on a single trading day, and (iii) to all Members at the greater of $500,000 or the amount recovered under any

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] The Exchange represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, *e.g.*, regardless of whether that Member is registered as a Market Maker with the Exchange.

applicable insurance policy in a single calendar month.

To the extent that all claims resulting from systems failures or negligence by Exchange employees cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for, then the Exchange proposes to allocate the maximum amount among all such claims arising on a single trading day or during a single calendar month, as applicable, based on the proportion that each such claim bears to the sum of all such claims.

In order for a Member to be eligible to receive payment, claims must be made in writing and must be submitted no later than the opening of trading on the next business day following the day on which the use of the Exchange gave rise to such claims. Once in receipt of a claim, the Exchange will verify that: (i) A valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure or a negligent act or omission of an Exchange employee occurred during the execution or handling of that order. If all the criteria for submitting a claim have been met, the claim will be qualified for processing with all other claims at the end of the calendar month in which the incident occurred.

2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, for the reasons described above, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by providing more certainty as to the Exchange's potential liability resulting from systems problems and negligence by Exchange employees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. The Exchange requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay[11] is consistent with the protection of investors and the public interest. Given that the Exchange's proposed rule change is substantially similar to the rules of other exchanges previously approved by the Commission,[12] the proposal does not appear to present any novel regulatory issues. Moreover, the proposal would make more certain the Exchange's potential liability for such losses upon commencement of its operation as an exchange. Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BATS–2008–008 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–BATS–2008–008*. 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 Exchange. 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–BATS–2008–008* and should be submitted on or before November 26, 2008.

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been satisfied.

[11] 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).

[12] *See* NYSE Arca Equities Rule 13.2, NASDAQ Rule 4626, and ISE Rule 705.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26278 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58868; File No. SR–ISE–2008–79]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

October 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 4 Premium Products.[3] The text of the proposed rule change is available on the ISE's Web site (*http://www.ise.com*), at the principal office of the ISE, 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 self-regulatory organization 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on the iShares Dow Jones U.S. Medical Devices Index Fund (''IHI''), the iShares Dow Jones U.S. Oil & Gas Exploration & Production Index Fund (''IEO''), the iShares Dow Jones U.S. Regional Banks Index Fund (''IAT''),[4] and the SPDR® S&P Oil & Gas Exploration & Production ETF (''XOP'').[5] The Exchange represents that IHI, IEO, IAT, and XOP are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on IHI, IEO, IAT, and XOP.[6] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[7] and $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[8] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[9] Further, since options on IHI, IEO, IAT, and XOP are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[4] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''Dow Jones,'' ''Dow Jones U.S. Select Medical Equipment Index,'' ''Dow Jones U.S. Select Oil Exploration & Production Index,'' and ''Dow Jones U.S. Select Regional Banks Index'' are service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. The iShares Dow Jones U.S. Medical Devices Index Fund (''IHI''), the iShares Dow Jones U.S. Oil & Gas Exploration & Production Index Fund (''IEO''), and the iShares Dow Jones U.S. Regional Banks Index Fund (''IAT'') are not sponsored, endorsed, sold, or promoted by Dow Jones. BGI and Dow Jones have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IHI, IEO, and IAT or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IHI, IEO, and IAT or with making disclosures concerning options on IHI, IEO, and IAT under any applicable federal or state laws, rules or regulations. BGI and Dow Jones do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[5] ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' ''Select Sector SPDR®,'' ''Select Sector SPDRs®,'' and ''the S&P® Oil & Gas Exploration & Production Select Industry Index'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill''), and have been licensed for use by State Street Bank and Trust Company (''State Street'') in connection with the listing and trading of SPDR® S&P Oil & Gas Exploration & Production ETF (''XOP''). State Street and Standard & Poor's, (''S&P''), a division of McGraw-Hill, do not sponsor, endorse, or promote XOP. State Street, McGraw-Hill, and S&P have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on XOP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on XOP or with making disclosures concerning options on XOP under any applicable federal or state laws, rules or regulations. State Street, McGraw-Hill, and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[6] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 per contract side and $0.15 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[7] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[8] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[9] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 per contract.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–79 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–ISE–2008–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2008–79 and should be submitted on or before November 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26277 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58877; File No. SR–NYSE–2008–108]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change for a Six-Month Pilot Program To Establish a New Class of NYSE Market Participants That Will Be Referred to as ''Supplemental Liquidity Providers'' (''SLPs'') and Will Be Designated as Exchange Rule 107B

October 29, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 24, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a six-month pilot program (''Pilot'' or ''program'') to establish a new class of NYSE market participants that will be referred to as ''Supplemental Liquidity Providers'' (''SLPs'') and will be designated as Exchange Rule 107B.

The text of the proposed rule change is available at NYSE, *http://www.nyse.com*, and 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule filing, the NYSE is proposing a six-month pilot program to establish a new class of market participants: Supplemental Liquidity Providers (''SLP''). SLPs will supplement the liquidity provided by Designated Market Makers (''DMMs'') when the NYSE ''New Market Model'' is approved by the SEC. SLPs may only enter orders electronically from off the Floor of the Exchange and may only enter such orders directly into Exchange systems and facilities designated for this purpose. All SLP orders must only be for the proprietary account of the SLP member organization. Thus, an SLP will not handle orders from public customers or otherwise act on an agency basis. They will have a 5% average quoting requirement per assigned security. Additionally, if an SLP posts displayed or non-displayed liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate.

By establishing this new class of market participant, the NYSE is seeking to provide incentives for quoting and to

add competition to the existing group of liquidity providers. By requiring SLPs to quote at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') a percentage of the regular trading day in their assigned securities, and by paying a rebate when the SLP's interest results in an execution, the Exchange is rewarding aggressive liquidity providers in the market. The Exchange believes that this rebate program will encourage the additional utilization of, and interaction with, the NYSE and provide customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.

Responsibilities of the Supplemental Liquidity Provider

SLP's 5% Avearge Quoting Requirement

An SLP is required to maintain a bid or an offer at the NBB or NBO (*e.g.*, the ''inside'') averaging at least 5% of the trading day for each assigned security in round lots in order to maintain its status as an SLP. If an SLP fails to meet the quoting requirement for three consecutive months, the Exchange may revoke the SLP status pursuant to Section (i)(1)(C)(iii) of the proposed Rule.

SLP's 3% Average or More Quoting Requirement for Rebate Purposes

If an SLP posts liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate of $.0015 per share for such executions provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the NBB or the NBO in its assigned securities in round lots (*see* Section (i) (''Non-Regulatory Penalties'') and Section (f) (''Calculation of Quoting Requirements'') of the proposed Rule). Meeting the 3% average quoting requirement for rebates does not satisfy the 5% average quoting requirement which SLPs must meet in order to remain in the SLP program. The rebate calculation is described in more detail below.

A member organization that acts as an SLP is not permitted to act as a Designated Market Maker (''DMM'') on the Floor of the Exchange in the same security. Thus, a member organization that acts as a DMM on the Floor may not also act as an SLP in those securities registered to the DMM unit.

Like all other member organizations of the Exchange, an SLP must abide by NYSE and SEC rules and regulations and must deal in a manner consistent with just and equitable principles of trade. SLPs are subject to regulatory oversight by NYSE Regulation and FINRA.

Assigned Securities

During the proposed SLP Pilot program, the SLP Liaison Committee, as defined in Section (d)(1) of the proposed Rule, will initially assign a cross section of NYSE-listed securities to each SLP. The SLP Liaison Committee will determine which securities will be assigned to an SLP and the number of securities assigned to each SLP. The eligible securities available to be assigned to SLPs will initially include five hundred (500) of the most actively traded NYSE-listed securities. Depending upon the success of the SLP program, the Exchange will gradually add more NYSE-listed securities to the program, with the intent of including all NYSE-listed securities to the program.

The Exchange believes that the Pilot will provide the Exchange with a unique opportunity to monitor the success of the SLP incentives by starting with a smaller cross section of securities. By doing so, the Exchange will be better equipped to address actual and potential administrative and operational problems without unnecessary risk to the Exchange and to its customers. The Pilot will also provide the Exchange with the opportunity to identify and address any such problems and make beneficial changes to the SLP program before expanding the program.

In addition to its usefulness to the Exchange, the Pilot will provide the SLPs with essential practical experience with the new program and enable the SLPs to become proficient in the SLP role before expanding the assigned securities to all NYSE-listed securities.

The SLP Liaison Committee, in its discretion, will assign one or more SLPs to each security depending upon the trading activity of the security. The SLP Liaison Committee will likely assign a greater number of SLPs to more actively traded securities.

Qualifications of the Supplemental Liquidity Provider

A member organization of the Exchange must have the following qualifications in order to obtain SLP status:

(1) Adequate technology to support electronic trading through the related systems and facilities of the Exchange and report qualifying trading activity to Exchange systems utilizing unique and separate mnemonics specifically dedicated to SLP trading activity;

(2) Adequate trading infrastructure to support SLP trading activity, which includes support staff to maintain operational efficiencies in the SLP program and adequate administrative staff to manage the member organization's SLP program;

(3) Quoting performance that demonstrates an ability to meet the 5% quoting requirement in each assigned security;

(4) A disciplinary history that is consistent with just and equitable business practices; and

(5) The business unit of the member organization acting as an SLP must have in place adequate information barriers between the SLP unit and the member organization's customer, research and investment banking business.

Adequate Technology for Trading and Reporting: Because the SLP will only be permitted to trade electronically from off the Floor of the Exchange, a member organization's off-Floor technology must be fully automated to accommodate the Exchange's trading and reporting systems that are relevant to operating as an SLP. If a member organization is unable to support the relevant electronic trading and reporting systems of the Exchange for SLP trading activity, it will not qualify as an SLP.

Adequate Trading Infrastructure: Upon applying for status as an SLP, a member organization must have adequate trading infrastructure, which includes support staff to maintain operational efficiencies in the SLP program and adequate administrative staff to manage the member organization's SLP program.

Disciplinary History: Upon applying for SLP status, a member organization's disciplinary history must reflect conduct that is consistent with just and equitable business practices.

Quoting Performance: Upon applying for SLP status, a member organization's ability to meet the 5% quoting requirement may be demonstrated by past and or current trading activity. If an applicant has not demonstrated an ability to meet the 5% quoting requirement to the satisfaction of the SLP Liaison Committee, the applicant may not qualify as an SLP.

Information Barriers: The business unit of the SLP that submits orders on behalf of the member organization must have in place adequate information barriers between the SLP unit and the member organization's customer, research and investment banking business.

SLP Application Process

To become an SLP, a member organization must submit an SLP application form with all supporting documentation to the SLP Liaison Committee. The SLP Liaison Committee

will determine whether an applicant is qualified to become an SLP based on the qualifications described in Section (c) of the proposed Rule (''Qualifications of a Supplemental Liquidity Provider''). The qualifications focus on the adequacy of the applicant's trading and reporting technology and trading infrastructure. The applicant's disciplinary history will be considered as well.

After submission of the SLP application form and supporting documentation, the SLP Liaison Committee will notify the applicant member organization of its decision. If an applicant is approved by the SLP Liaison Committee to receive SLP status, the applicant must establish connectivity with relevant Exchange systems and facilities.

The processing of all applications may be suspended when the SLP Liaison Committee has determined that there is a sufficient number of SLPs assigned to each eligible security in the SLP program (*see* Section (g)(2) of the proposed Rule).

If an applicant is disapproved or ''disqualified,'' pursuant to Section (i)(2) of the proposed Rule, by the SLP Liaison Committee, such applicant may request an appeal of such disapproval or disqualification by the SLP Panel as provided in Section (j) (''Appeal of Non-Regulatory Penalties'') of this Rule, and/or reapply for SLP status three (3) months after the month in which the applicant received a disapproval or disqualification notice from the Exchange (*see* Section (d)(6) of the proposed Rule).

Voluntary Withdrawal of SLP Status

An SLP may withdraw from the status of an SLP at any time by giving notice to the SLP Liaison Committee, the Market Surveillance Division of NYSE Regulation, Inc. and the NYSE Operations Division (*see* Section (e) (''Voluntary Withdrawal of Supplemental Liquidity Provider Status'' of the proposed Rule). However, withdrawal of SLP status will not become effective until the withdrawing SLP's assigned securities are reassigned to other SLPs. After the notice of withdrawal is received by the SLP Liaison Committee, the Market Surveillance Division and the NYSE Operations Division, the SLP Liaison Committee will reassign said securities as soon as practicable but no later than 30 days of the date said notice is received by the SLP Liaison Committee, the Market Surveillance Division and the NYSE Operations Division. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing SLP will have no obligations under this Rule 107B and will not be held responsible for any matters concerning its previously assigned SLP securities upon termination of the 30-day period.

Quoting Requirements of the Supplemental Liquidity Provider

In order to maintain SLP status, an SLP is required to maintain a bid or an offer at the NBB or NBO on the Exchange averaging at least 5% of the trading day in round lots for each assigned security.[4] While the SLP may provide displayed and non-displayed liquidity (*e.g.*, reserve and dark orders), the 5% average quoting requirement can only be satisfied when an SLP posts displayed liquidity in its assigned securities in round lots at the NBB or the NBO. Thus, non-displayed liquidity will not be counted as credit towards the 5% quoting requirement. Additionally, tick sensitive orders (*i.e.*, ''Sell Plus,'' ''Buy Minus'' (*see* Rule 13) and ''Buy Minus Zero Plus'') will not be counted as credit towards the 5% quoting requirement.

In order for an SLP to be entitled to a rebate, an SLP must post liquidity on the Exchange that executes against incoming orders and meet the monthly minimum quoting requirement for rebates averaging at least 3% at the NBB or the NBO in round lots in its assigned securities (*see* Section (b) (''Financial Rebates for Executed Transactions'') in the proposed Rule). If the SLP does not meet a minimum monthly quoting requirement averaging at least 3%, an SLP will not be entitled to a rebate on executed volume in that given month in that particular affected security (*see* Section (i) (''Non-Regulatory Penalties'') of the proposed Rule).

The SLP is not subject to any minimum or maximum quoting size requirement apart from the requirement that an order be for at least one round lot (*see* Section (f)(2) of the proposed Rule).

An SLP must use its SLP mnemonic when trading as an SLP in its assigned securities in order to obtain credit for their SLP trading activity (*see* Section (f)(2) of the proposed Rule). Quoting and rebate credit will be measured only by using the SLP's unique mnemonics specifically designated for SLP trading activity.

Calculation of the Quoting Requirements

The SLP's quoting requirements will not be in effect in the first month the SLP operates as an SLP. The Exchange will provide the SLP with a one-month grace period to allow preparation time for the SLP. Therefore, this quoting requirement will not take effect until the second month of an SLP's operation as an SLP.

Beginning with the second month an SLP is operating as an SLP, an SLP must satisfy the 5% quoting requirement for each assigned security.[5] The SLP Liaison Committee will determine whether an SLP has met its quoting requirement for the trading days[6] in a calendar month by calculating the following:

(1) The ''Daily NBB Quoting Percentage'' by determining the percentage of time an SLP has at least one round lot of displayed interest in an Exchange bid at the NBB during each trading day for a calendar month;

(2) The ''Daily NBO Quoting Percentage'' by determining the percentage of time an SLP has at least one round lot of displayed interest in an Exchange offer at the NBO during each trading day for a calendar month;

(3) The ''Average Daily NBBO Quoting Percentage'' for each trading day by summing the ''Daily NBB Quoting Percentage'' and the ''Daily NBO Quoting Percentage'' in each assigned security then dividing such sum by two; and

(4) The ''Monthly Average NBBO Quoting Percentage'' for each assigned security by summing the security's ''Average Daily NBBO Quoting Percentages'' for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month.

Example of Quoting Requirement Calculation

Below is an example of a quoting requirement calculation. For purposes of this example, it is assumed that SLP No. 1 has two assigned securities, A and B, and that there were 5 trading days in the selected calendar month.

The ''Average Daily NBBO Quoting Percentage'' for SLP No. 1 is calculated for each security by summing the daily NBB and NBO of each security for that day and dividing that number by two:

[4] *See* Section (a) of the proposed Rule.

[5] The Exchange Strategic Analysis Department will be responsible for generating SLP performance data and providing such data to the SLP Liaison Committee in order to determine which SLPs are meeting their quoting requirements and are eligible for financial rebates.

[6] For purposes of Section (f)(1) of the proposed rule text (Exhibit 5), ''trading day'' shall mean any day on which the Exchange is scheduled to be open for business. Days on which the Exchange closes prior to 4 p.m. (Eastern Time) for any reason, which may include any regulatory halt or trading halt, shall be considered a trading day.

SECURITY A

Trading days	NBB (percent)	NBO (percent)	Calculation of "Average Daily NBBO Quoting Percentage" for SLP No. 1	"Average Daily NBBO Quoting Percentage"
T1	4	6	4% + 6% = 10% divided by 2 = 5%	5
T2	3	5	3% + 5% = 8% divided by 2 = 4%	4
T3	4	4	4% + 4% = 8% divided by 2 = 4%	4
T4	6	8	6% + 8% = 14% divided by 2 = 7%	7
T5	5	5	5% + 5% = 10% divided by 2 = 5%	5

SECURITY B

Trading days	NBB (percent)	NBO (percent)	Calculation of "Average Daily NBBO Quoting Percentage" for SLP No. 1	"Average Daily NBBO Quoting Percentage"
T1	5	7	5% + 7% = 12% divided by 2 = 6%	6
T2	4	6	4% + 6% = 10% divided by 2 = 5%	5
T3	6	8	6% + 8% = 14% divided by 2 = 7%	7
T4	7	9	7% + 9% = 16% divided by 2 = 8%	8
T5	9	9	9% + 9% = 18% divided by 2 = 9%	9

The "Monthly Average NBBO Quoting Percentage" for each security is then calculated by summing the security's "Average Daily NBBO Quoting Percentages" for all five trading days of the calendar month and then dividing the resulting total by the number of trading days in the calendar month (in this instance 5).

SECURITY A

"Average Daily NBBO Quoting Percentage"					Calculation of "Monthly Average NBBO Quoting Percentage" for SLP No. 1	"Monthly Average NBBO Quoting Percentage"
T1	T2	T3	T4	T5		
5%	4%	4%	7%	5%	5%+4%+4%+7%+5% = 25% divided by 5 = 5%	5%

SECURITY B

"Average Daily NBBO Quoting Percentage"					Calculation of "Monthly Average NBBO Quoting Percentage" for SLP No. 1	"Monthly Average NBBO Quoting Percentage"
T1	T2	T3	T4	T5		
6%	5%	7%	8%	9%	6%+5%+7%+8%+9% = 35% divided by 5 = 7%	7%

Financial Rebates for Executed Transactions

When an SLP posts liquidity, displayed or non-displayed, on the Exchange in its SLP assigned securities and such liquidity executes against an incoming order, the SLP will receive a financial rebate for that executed transaction provided the SLP has met its rebate quoting requirement averaging at least 3% at the NBB or the NBO in each assigned security pursuant to Section (i)(1)(A) and (B) ("Non-Regulatory Penalties"). An SLP will only receive a rebate when it has met the monthly 3% or better quoting requirement in its assigned securities and the SLP's posted displayed or non-displayed liquidity results in an execution.

SLP Rebate Calculation

The SLP rebate will be $.0015 per share on executed volume when the SLP provides liquidity.[7] The rebate will be paid for displayed and non-displayed orders provided that the SLP meets the quoting requirement averaging 3% or more at the NBB or NBO in its assigned securities for a given month. If an SLP does not meet the average quoting requirement described above, such SLP will not be entitled to a rebate. As discussed previously, if an SLP does not meet its quoting requirement averaging 5% at the NBB or the NBO for each assigned security for 3 consecutive months, such SLP may be disqualified from SLP status. The Exchange will track the volume and quoting requirement of SLPs by their designated SLP mnemonics.

Except for the rebate, all other SLP fees are the same as existing customer fees on the Exchange (*see* the NYSE Price List for equities on the NYSE Web site).

SLP Parity With Other Market Participants Pursuant to Rule 72

Proposed New Market Model

In the New Market Model Exchange systems will be responsible for share allocation and thus will create interest files for each market participant. Individual Floor brokers and the DMM registered in the security shall each constitute single participants. All off-Floor orders entered in Exchange

[7] The Exchange will file a separate fee filing with the SEC pursuant to the provisions of Section 19b–4 that will outline the SLP rebate program described above. Thereafter, the calculation and amount of the SLP rebate ($0.0015 per executed share) will be published in the NYSE Price List available on the NYSE Web site.

systems at the Exchange BBO shall together constitute a single participant (''Book Participant'') for the purpose of share allocation. SLP orders will be in the ''Book Participant'' category pursuant to Rule 72 of the proposed New Market Model (see Section (f)(4) of the proposed Rule).

Market Data and Trading Information Available to the SLP

The universe of trading information and market data available to the SLP will include market data published by the NYSE and all other automated trading centers (as defined in Rule 600 of Regulation NMS), trading information published on the Consolidated Tape and on the NYSE Open Book® (''Open Book'').[8] Thus, the SLP will have the same published trading information and market data that all other NYSE customers have available to them.

Non-Regulatory Penalties

If an SLP fails to meet the 5% average quoting requirement for any assigned security, the SLP may be subject to non-regulatory penalties imposed by the SLP Liaison Committee (*see* Section (i) of the proposed Rule). Such non-regulatory penalties include: (1) Denial of the financial rebate; (2) removal of one or more assigned securities from the SLP; and (3) disqualification. These non-regulatory penalties and the conditions under which such penalties are imposed may be appealed by an SLP as provided in Section (j) (''Appeal of a Non-Regulatory Penalty'') of the proposed Rule and described in more detail below.

Penalties for Quoting Less than 5% in a Given Calendar Month

In a given calendar month, if an SLP maintains a quote at the NBB or NBO averaging 3% of the trading day, but less than the average of 5% of the trading day in any assigned security, the SLP will receive a financial rebate for that calendar month for executed transactions in that particular security as described in Section (b) (''Rebates for Executed Transactions'') of the proposed Rule. Failure to meet the 5% quoting requirement for each assigned security in that month will be counted towards the three-month disqualification period provided in paragraph (i)(C) of the proposed Rule.

In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging less than 3% of the regular trading day in an assigned security, the SLP will not receive the financial rebate for that month for transactions executed in that particular assigned security. The failure to meet the 5% average quoting requirement for any assigned security in that month will also be counted towards the three-month disqualification period.

If an SLP fails to meet the 5% quoting requirement for three consecutive calendar months in any assigned security, the SLP Liaison Committee may, in its discretion, take the following non-regulatory action:

(1) Revoke the assignment of the affected security(ies);

(2) Revoke the assignment of an additional, unaffected security from an SLP; or

(3) Disqualify a member organization's status as an SLP.

Disqualification Determinations:

In the second consecutive calendar month that an SLP fails to meet the 5% quoting requirement, the SLP Liaison Committee's will notify the SLP in writing that the SLP may be disqualified if it fails to meet the quoting requirement the third consecutive month.[9] If the SLP fails to meet the 5% quoting requirement for a third consecutive month, the SLP may be disqualified from SLP status.

When disqualification determinations are made, the SLP Liaison Committee will provide a disqualification notice to the member organization informing the member organization of its disqualification as an SLP.

If a member organization is disqualified from its status as an SLP pursuant to Section (i)(1)(C)(iii) of the proposed Rule, the member organization may appeal the disqualification pursuant to Section (j) (''Appeal of a Non-Regulatory Penalties'') of the proposed Rule, or re-apply for SLP status in accordance with Section (d)(6) (''Re-application for SLP Status'') of the proposed Rule. However, the re-application processes may not begin until three calendar months after the month in which the member organization received its disqualification notice.

Appeal of Non-Regulatory Penalties

An SLP may request an appeal of the decision to impose a non-regulatory penalty as provided in Section (j) of the proposed Rule. Upon receiving a request for an appeal, a panel of NYSE employees referred to as the ''SLP Panel'' will review the decision to impose non-regulatory penalties. The SLP Panel shall consist of the NYSE's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and two (2) officers of the Exchange designated by the Head of the U.S. Markets Division.

The SLP Panel will review the facts of the subject non-regulatory penalty and render a decision as to the correctness of the decision to impose the penalty. The SLP Panel may overturn or modify an action taken by the SLP Liaison Committee, and all determinations by the SLP Panel will constitute final action by the Exchange on the disputed matter.

Regulatory Oversight of SLPs

Member organizations that act as SLPs will be subject to regulatory oversight by NYSE Regulation and FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed Rule is consistent with these principles in that it seeks to establish a new class of market participant that will provide additional liquidity to the market and add competition to the existing group of liquidity providers. The NYSE believes that by requiring an SLP to quote at the NBB or the NBO a percentage of the regular trading day in their assigned securities, and by paying an SLP a rebate when its posted interest results in an execution, the Exchange is rewarding aggressive liquidity providers in the market, and by doing so, the Exchange will encourage the additional utilization of, and interaction with, the NYSE and provide customers with the premier venue for price discovery, liquidity, competitive quotes and price improvement.

[8] The NYSE Open Book is provided by the NYSE to vendors and customers in two modes. The first displays the depth of the market refreshed every five seconds. The second displays the depth of the market in real time. NYSE Open Book discloses limit order interest at the price at the best bid and offer and at prices below the best bid and above the best offer.

[9] The SLP Liaison Committee will be responsible for issuing the letter to an SLP that fails to meet its quoting requirement for three consecutive months. It will also be responsible for advising an SLP of its eligibility or ineligibility to become an SLP.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder [13] because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange states that the Commission recently issued interpretative guidance regarding the rule-filing process (the ''Rule Streamlining Guidance'').[14] In that release, the Commission recognized the need to expedite the rule-making process for self-regulatory organizations in order to help the U.S. capital markets remain competitive both domestically (with ECNs, ATSs and other less-regulated venues), and internationally:

The national securities exchanges' need to implement quickly new trading rules has become increasingly critical, particularly given the evolving role of securities exchanges, innovations in U.S. and cross-border trading, and the increasingly competitive financial marketplace.[15]

The Exchange states that, in recognition of the highly competitive environment for national securities exchanges today, the Commission gave interpretative guidance on Section 19(b)(3)(A) and Rule 19b–4(f), which permit SROs to designate proposed rule changes as ''immediately effective'' without the formal approval process provided elsewhere in the Act. In particular, the Commission ''encourage[d] exchanges to consider filing a broader range of proposed rules'' based on the standards outlined in Rule 19b–4(f)(6).[16] These standards generally permit immediate effectiveness for trading rule changes that meet certain technical requirements [17] and do not ''significantly affect the protection of investors or the public interest,'' or ''impose any significant burden on competition.''

The proposed rule meets the immediate effectiveness criteria in the Rule Streamlining Guidance because it is consistent with previously approved rules for market makers.

As explained more fully in the Rule Streamlining Guidance, proposed trading rules can be filed for immediate effectiveness if each policy issue raised by the proposed trading rule ''(i) has previously been considered by the Commission when the Commission approved another trading rule (that was subject to notice and comment) pursuant to 19(b)(2) of the Exchange Act, and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.'' [18]

The Exchange believes that the proposed rule filing meets both the statutory standards for filings under Rule 19b–4(f)(6) and the standards set out in the Rule Streamlining Guidance. In particular, and as explained more fully below, the policies raised in this proposed rule:

(1) Have previously been considered by the Commission when the Commission approved other market maker rules after public notice and comment under Section 19(b)(2) of the Exchange Act; and

(2) The rule resolves such policy issues in a manner that is consistent with such prior approvals.

According to the Exchange, the concepts contained in the proposed rule are not new. Indeed, the Exchange notes that the Commission has had extensive opportunities to consider and hear comment on how market makers should interact with markets and the appropriate rewards for those services.[19] As a result, the Exchange believes that each policy issue raised by proposed Rule 107B ''has previously been considered by the Commission when the Commission approved another trading rule (that was subject to notice and comment) pursuant to 19(b)(2) of the Exchange Act.''

While the SLP is not a ''market maker'' per se, the Exchange believes that the proposed SLP rule filing shares most, if not all, of the same policy issues previously commented upon and resolved in some of the market maker rules referred to in the Rule Streamlining Guidance at footnote 44 and other rules that were filed ''regular way,'' noticed, commented upon and approved by the SEC.[20] The Exchange believe that, by analogy, the market maker policy issues are the same or similar to those of the SLP, but to a lesser extent. According to the Exchange, a market maker may have more obligations and more trading advantages than an SLP, but the quoting requirements of a market maker and an SLP are not materially different. The same argument may be made for the rebate. A market maker rebate for posting liquidity is not materially different in policy or application than the SLP rebate. Therefore, the Exchange contends that the resolution and approval of market maker policies is analogous to the resolution of SLP policies. The policy issues that have been ''resolved'' in prior market maker filings include:

- Application process for market maker and SLP status; [21]
- Market maker qualifications for on-Floor or off-Floor electronic trading; [22]
- Process for voluntary withdrawal from the marker maker program; [23]

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Securities Exchange Commission Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (''Commission Guidance and Amendment to the Rule Relating to Organization and Program Management Concerning Proposed Rule Changes by Self-Regulatory Organizations'').

[15] *Id.* at page 12 [sic].

[16] 17 CFR 240.19b–4(f)(6)(i) and (ii).

[17] Filings must be submitted for pre-clearance at least five days prior to filing, and must not become effective, on their terms, until the thirtieth day after the filing date.

[18] *Id.* at page 14 [sic].

[19] Footnote 44 of the Rule Streamlining Guidance includes cites to several SRO market maker rules that were filed ''regular way'' pursuant to Section 19(b)(2) of the Act.

[20] The filings referenced herein include some of those noted by the Commission in footnote 44 of the Rule Streamlining Guidance, *see* Securities Exchange Act Release Nos. 53652 (April 13, 2006), 71 FR 20422 (April 20, 2006) (SR–Amex–2005–100) and 54580 (October 6, 2006), 71 FR 60781 (October 16, 2006) (SR–ISE–2006–40), as well as other filings submitted, reviewed and approved by the Commission pursuant to Section 19b–2, *See* Securities Exchange Act Release Nos. 43004 (June 30, 2000), 65 FR 43060 (July 12, 2000) (SR–CBOE–1998–54), 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (SR–CBOE–2004–24) and 53635 (April 12, 2006), 71 FR 20144 (April 19, 2006) (SR–Amex–2005–75).

[21] *See* AMEX Rules 993 and 994–ANTE (concerning Supplemental and Remote Registered Options Traders (''SROTs'' and ''RROTs''), respectively); ISE Rule 902 (concerning Second Market Competitive Market Makers (''SMCMMs'')); CBOE Rules 8.83 and 8.92 (concerning Designated Primary Market Makers (''DPMs'') and e–DPMs, respectively).

[22] *See* AMEX Rules 993 and 994–ANTE; ISE Rule 902; CBOE Rules 8.83 and 8.92.

[23] *See* AMEX Rules 993 and 994–ANTE; CBOE Rule 8.83.

• Appeal process if disapproved or disqualified;[24]
• Process for allocation of assigned securities;[25]
• Quoting requirement at the NBB or the NBO a percentage of the trading day for proprietary accounts;[26]
• Creation of information barriers to prevent prohibited sharing of trading information;[27]
• Imposition of penalties when quoting requirement is not met;[28] and
• Appeal process when penalties are imposed.[29]

The Exchange acknowledges that the cited market maker rules do not specifically discuss rebates for executions of quoted liquidity, which is offered in the proposed SLP rule. However, the Exchange argues that other SRO rule filings relating to pricing incentive programs for market makers have been submitted pursuant to Section 19(b)(3)(a)(f)(2) and received SEC approval.[30]

For example, on NYSE Arca, the exchange pays a rebate to the Lead Marker Maker (''LMM'') and customers for executions on posted liquidity.[31] The Exchange itself currently offers ''liquidity provision payments'' to specialists, which are similar to rebates, based on Exchange revenue and the amount of liquidity posted by each specialist unit.[32] Rebates for liquidity providers have become a common industry practice and are utilized by most, if not all, trading venues including NASDAQ, BATS, Direct Edge and others.[33]

To the extent that an SLP's quoting requirement is one of the services also provided by a market maker, approving a commensurate rebate for an SLP is analogous to the rebates previously approved by the Commission for one aspect of a market maker's services.

In view of the analogous precedents established in the market maker rules, the Exchange believes that its proposed rule for SLPs presents no novel issues and that the compensation scheme is consistent with both industry practice and prior approval of market maker rules. Accordingly, the Exchange believes that immediate effectiveness would be appropriate under the Exchange Act, the Exchange Act rules, and the Rule Streamlining Guidance.

The proposed rule meets the immediate effectiveness criteria in the Rule Streamlining Guidance for rules relating to market participants.

The Exchange believes that the proposed rule also qualifies for immediate effectiveness because it is a trading rule that addresses the obligations of market participants (*e.g.*, SLPs), would have the effect of strengthening the market, and provides a reward to SLPs that is not disproportionate to the services they provide to the market.

At the outset, the Exchange notes that in the Rule Streamlining Guidance, the Commission provided examples of proposed rule filings that are ''appropriate'' for immediate effectiveness in the rule streamlining publication, and specifically included proposed rule filings that address market maker obligations:

The Commission carefully reviews special advantages provided to market makers when it considers exchange trading rule proposals. Market makers can play an important role in providing liquidity to the market, and an exchange can appropriately reward them for that as well as the services they provide to the exchange's market, as long as the rewards are not disproportionate to the services provided. For example, a proposed trading rule change that strengthens the market while providing benefits to market makers is eligible for immediate effectiveness if the benefits conferred are offset by corresponding responsibilities to the market that provide customer trading interest a net benefit.[34]

Thus, under Commission precedent, a rule filing involving incentives for market makers would be appropriate for immediate effectiveness if the reward to market makers is in line with the services or benefits that the market maker is providing to the market.

The proposed rebate to SLPs is not disproportionate to the benefit they provide.

The Exchange asserts that the payment of rebates to market makers has long been considered by the SEC to be an appropriate incentive for adding liquidity to the market thereby improving the market. As noted more fully above, the SEC has previously approved the payment of incentives to market makers on Nasdaq,[35] NYSE Arca,[36] Direct Edge[37] and BATS,[38] among others. The Exchange also notes that previous NYSE fee filings for rebates have been submitted to the SEC pursuant to Section (f)(2), and have become immediately effective. For example, Nasdaq submitted a filing that became immediately effective upon filing, which had the same effect as the NYSE's proposed SLP filing. In particular, SR–NASDAQ–2007–61, which is similar to NYSE Arca's Designated Marker Maker filing (*see* NYSE Arca Equities Rule 7.24(b) which refers to DMMs who also act as LMMs),[39] requires the Designated Liquidity Provider (''DLP'') to maintain a ''minimum performance standard'' in which the DLP must quote a percentage of the trading day at the NBB or the NBO in ETFs and ILSs. If the DLP quotes a certain percentage of the trading day, it will receive a 40 cent rebate for posting liquidity and a 25 cent fee for taking liquidity. In this fee filing, NASDAQ indicated that by allocating pricing benefits to certain market makers who have ''tangible commitments to the market,'' the program would encourage, among other things, development of new financial products. In reviewing Nasdaq's proposal, the Exchange believes that the SEC evaluated the balance struck between the rewards obtained and services provided by the various market makers.

Based on the rationale of previous rule filings for market maker rebates, the Exchange contends that the proposed SLP rebate for executions of posted liquidity is not ''disproportionate to the services provided'' by the SLP. It is important to note that the SLP rebate[40] is the only benefit the SLP earns when posted liquidity results in an execution. As discussed earlier, the SLP rebate will be $.0015 per share on executed volume when the SLP posts liquidity to the market provided that the SLP meets the quoting requirement averaging at least 3% at the NBB or NBO in its assigned

[24] *See* AMEX Rule 993–ANTE.

[25] *See* AMEX Rules 993 and 994–ANTE; CBOE Rules 8.84 and 8.92.

[26] *See* AMEX Rules 993 and 994–ANTE; ISE Rule 904; CBOE Rules 8.85 and 8.93.

[27] *See* AMEX Rules 993 and 994–ANTE; CBOE Rules 8.91 and 8.93.

[28] *See* AMEX Rules 993 and 994–ANTE; CBOE Rules 8.90 and 8.94.

[29] *See* AMEX Rules 993 and 994–ANTE; CBOE Rules 8.90 and 8.94.

[30] *See* SR–NYSE Arca–2008–36 (approving Market Maker Post Liquidity Incentive credits) and SR–NASDAQ–2007–61 (approving incentives for market makers for ETFs and ILSs).

[31] *See* NYSE Arca Equities Fee Schedule.

[32] *See* SR–NYSE–2007–78.

[33] *See* the following Web sites for price lists: NASDAQ (*http://www.nasdaqtrader.com*); BATS (*http://www.batstrading.com*); Direct Edge (*http://www.directedge.com*).

[34] *See* Rule Streamlining Guidance, page 16 [sic], paragraph 2, ''Market Maker Obligations.''

[35] *See* SR–Nasdaq–2007–61. *See also* ''*http://www.nasdaqtrader.com.*''

[36] *See* SR–NYSE Arca–2008–36.

[37] *See* Direct Edge Price List at ''*http://www.directedge.com.*''

[38] *See* BATS Price List at ''*http://www.batstrading.com.*''

[39] *See* NYSE Arca Equities Rule 7.24.

[40] The SLP rebate calculation will be provided in a subsequent fee filing by the Exchange, and when filed with the SEC, the rebate calculation will appear on the Exchange's published Price List.

securities for a given month.[41] The rebate will be paid for displayed and non-displayed orders. If an SLP does not meet the average quoting requirement of at least 3% described above, such SLP will not be entitled to a rebate. Further, if an SLP does not meet its monthly quoting requirement averaging 5% at the NBB or the NBO for each assigned security for 3 consecutive months, such SLP may be disqualified from SLP status. Except for the rebate, all other SLP fees are the same as existing customer fees on the Exchange.

The Exchange notes that the proposed rebate is commensurate with the quoting requirements the SLP has for each assigned security as the SLP has no informational or trading advantage in the market. SLPs are basically customers with quoting requirements that may receive a financial incentive when posted SLP liquidity results in an execution. Under the proposed Rule, even if an SLP meets its quoting requirement averaging 3% or more in a given month, it may not receive a rebate if the posted liquidity does not result in an execution. Further, the Exchange believes that, while it is likely that when an SLP posts liquidity to the market the posted liquidity will result in executions, the SLP will not receive a rebate for such executions if it does not meet its average monthly quoting requirement of at least 3%.

The Exchange believes that the SLP rebate is commensurate with their limited role in the market. For example, NYSE Arca has tiered rebates: the ''Market Maker Post Liquidity Incentive Credit,'' which is a fee credit that applies to Market Makers (''MMs'') and LMMs, is substantially higher than those fee credits available to customers who have no affirmative obligations. Additionally, when posting liquidity on Arca, LMMs are entitled to 40 cents per 100 shares, while customer rebates, which are tiered, are only 22 cents and 23 cents per 100 shares.

Accordingly, the Exchange submits that this proposed filing qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) because the introduction of SLPs to the Exchange would strengthen the market while providing benefits to customers, the SLP's quoting requirement will increase liquidity in the market and enhance trading opportunities for customers and the rebate, which is conditioned on executions of posted liquidity, is commensurate with the services the SLP will provide to the market. Additionally, as discussed above, the Exchange believes that the Commission has already approved the introduction of similar classes of market participants on various exchanges in the past (*e.g.*, AMEX, CBOE, ISE, NASDAQ, NYSE Arca and NYSE) which, while filed regular way, were ultimately approved by the Commission. The Exchange therefore proposes that this rule should be made immediately effective upon filing in keeping with the policies and guidance of the Commission's rule streamlining publication.

Based on the foregoing, the Exchange submits that this proposed filing qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) because it is based on the provisions of similar rule filings which, while filed regular way, were ultimately approved by the Commission. The Exchange proposes that this rule should be made immediately effective upon filing in keeping with the policies and guidance enumerated in the Commission's Rule Streamlining Guidance.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[42] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[43] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiving the operative delay would allow SLPs to immediately add liquidity to the market and provide trading opportunities that may benefit all market participants. By requiring SLPs to quote at the NBB or the NBO a percentage of the regular trading day in their assigned securities, and by paying a rebate when the SLP's interest results in an execution, the Exchange proposes to reward liquidity providers in the market. Further, the Commission believes that the proposed quoting requirement and rebate is analogous to some of the benefits and obligations of Registered Market Makers[44] and notes that the SLP has no informational or trading advantage in the market.

Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.[45]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–108. 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

[41] The Exchange will file a separate fee filing pursuant to Section 19b–4.

[42] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[43] 17 CFR 240.19b–4(f)(6)(iii).

[44] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) (SR–NYSE–2008–46) (approving NYSE's new market model and noting that an exchange may reward market makers for benefits they provide to the exchange's market, but such rewards must not be disproportionate to the services provided by the market maker).

[45] 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).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR–NYSE–2008–108 and should be submitted on or before November 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26391 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58878; File No. SR–NYSEArca–2008–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Revise the Listing and Annual Fees Applicable to Paired Trust Shares

October 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 prepared by NYSE Arca. 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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), is proposing to amend its Schedule of Fees and Charges (''Fee Schedule'') to revise the listing and annual fees applicable to Paired Trust Shares listed on NYSE Arca, LLC (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities. The text of the proposed rule change is available on the Exchange's Web site at *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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca has determined to revise Exchange listing fees under the Exchange's Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to include Paired Trust Shares listed under NYSE Arca Equities Rule 8.400 under the term ''Structured Products''[3] for purposes of the Fee Schedule, rather than under the term ''Derivative Securities Products,''[4] where Paired Trust Shares are currently included. Therefore, the Exchange proposes to delete the term ''Paired Trust Shares'' from Footnote 3 of the Fee Schedule and to add such term in Footnote 4 of the Fee Schedule.

Under the current Fee Schedule, the Listing Fee for Derivative Securities Products is $5,000 per issue. The Listing Fee for Structured Products is based on the number of shares outstanding, and ranges from $5,000 to $45,000 per issue. The Annual Fee for Derivative Securities Products is based on the number of shares outstanding per issue, and ranges from $2,000 to $25,000. The Annual Fee for Structured Products also is based on the number of shares outstanding per issue, and ranges from $10,000 to $55,000.

The Exchange believes Paired Trust Shares[5] are appropriately categorized as Structured Products for purposes of the Fee Schedule. The trusts issuing such securities, like issuers of other categories of Structured Products and unlike issuers of Derivative Securities Products, do not hold underlying securities, commodities, futures or other financial instruments (other than U.S. Treasuries, and repurchase agreements on U.S. Treasuries to secure specified obligations).

In addition, the Exchange proposes to amend punctuation in Footnote 4 of the Fee Schedule and to amend Footnote 4 to add Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities to the securities covered by Rule 5.2(j)(6). Following Commission approval of the most recent amendment to Footnote 4 to the Fee Schedule,[6] Rule 5.2(j)(6) was amended to include these securities.[7] The Exchange, therefore, proposes to update Footnote 4 to reflect that such securities are covered by Rule 5.2(j)(6).

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[8] of the

[46] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As set forth in footnote 4 of the Fee Schedule, Structured Products currently are defined as securities listed under Rule 5.2(j)(1) (Other Securities); 5.2(j)(2) (Equity Linked Notes); Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities); and Rule 8.3 (Currency and Index Warrants).

[4] As set forth in footnote 3 of the Fee Schedule, Derivative Securities Products currently include securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.400 (Paired Trust Shares); 8.500 (Trust Units); and 8.600 (Managed Fund Shares).

[5] Paired Trust Shares currently traded on the Exchange pursuant to Rule 8.400 include shares of the MacroShares Oil Trusts, which are traded on the Exchange pursuant to unlisted trading privileges. *See* Securities Exchange Act Release No. 58058 (June 30, 2008), 73 FR 38484 (July 7, 2008) (SR–NYSEArca–2008–65). The Commission has approved MacroShares Medical Inflation Trusts for listing on the Exchange pursuant to Rule 8.400. *See* Securities Exchange Act Release No. 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR–NYSEArca–2008–63). In addition, the Commission has approved MacroShares Major Metro Housing Trusts for listing on the Exchange pursuant to Rule 8.400. *See* Securities Exchange Act Release No. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (SR–NYSEArca–2008–92). However, no issue of Paired Trust Shares is currently listed on the Exchange.

[6] *See* Securities Exchange Act Release No. 56975 (December 17, 2007), 72 FR 73393 (December 27, 2007) (SR–NYSEArca–2007–87) (order approving amendments to Fee Schedule relating to Structured Products).

[7] *See* Securities Exchange Act Release No. 57701 (April 23, 2008), 73 FR 23281 (April 29, 2008) (SR–NYSEArca–2008–20) (order approving amendments to Rule 5.2(j)(6) relating to Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

[8] 15 U.S.C. 78f(b).

Act, in general, and Section 6(b)(4)[9] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. The Exchange believes Paired Trust Shares are appropriately categorized as Structured Products for purposes of the Fee Schedule. The proposed amendment would therefore permit assessment of comparable fees to similarly structured products.

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

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

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 the 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*. Please include File Number SR–NYSEArca–2008–114 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–2008–114. 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 Exchange. 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–2008–114 and should be submitted on or before November 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

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[9] 15 U.S.C. 78f(b)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58879; File No. SR–NYSEArca–2008–113]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Three Series of SPDR Index Shares Funds

October 29, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE Arca. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. 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

NYSE Arca proposes to list and trade shares (''Shares'') of the following funds (''Funds''), which are series of SPDR Index Shares Funds (''Trust''): SPDR S&P Emerging Markets Small Cap ETF; SPDR S&P International Small Cap ETF; and SPDR DJ Wilshire International Real Estate ETF.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the following funds under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs''):[5] SPDR S&P Emerging Markets Small Cap ETF; SPDR S&P International Small Cap ETF; SPDR DJ Wilshire International Real Estate ETF. The Funds are currently listed on NYSE Alternext US LLC (''NYSE Alternext US'') (formerly, American Stock Exchange LLC) and are traded on the Exchange pursuant to unlisted trading privileges (''UTP''). Prior to listing on the Exchange, the Funds would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of Securities Exchange Act of 1934 (''Act''),[6] relating to listing the Funds on the Exchange.[7]

The investment objective of the SPDR S&P Emerging Markets Small Cap ETF is to provide investment results that, before fees and expenses, correspond generally to the total return performance of an index that tracks the small capitalization segment of global emerging market countries. The Fund uses a passive management strategy and ''sampling'' methodology designed to track the total return performance of the S&P/Citigroup Emerging Market US$2 billion Index (the ''Emerging Markets Small Cap Index''). The Emerging Markets Small Cap Index is a float adjusted market cap weighted index that represents the small capitalization segment of emerging countries included in the BMI Global Equity Index.

The investment objective of the SPDR S&P International Small Cap ETF is to replicate as closely as possible, before fees and expenses, the total return performance of an equity index based upon the developed world (except the U.S.) small capitalization equity markets. The Fund uses a passive management strategy and a ''sampling'' methodology designed to track the total return performance of the S&P/Citigroup World Ex US Cap Range < 2 Billion USD Index—a market capitalization weighted index that defines and measures the investable universe of publicly traded companies domiciled in developed countries outside the U.S.

The investment objective of the SPDR DJ Wilshire International Real Estate ETF Fund uses a passive management strategy and ''sampling'' methodology designed to track the price and yield performance of the Dow Jones Wilshire Ex-US Real Estate Securities Index (''DJW Ex-US RESI Index''). The DJW Ex-US RESI Index is a float adjusted market capitalization index designed to measure the performance of publicly traded real estate securities in countries excluding the U.S.

The Exchange is submitting this proposed rule change because the underlying indexes (''Indexes'') for the Funds do not meet all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Indexes meet all such requirements except for those set forth in Commentary .01(a)(B)(2).[8] The Exchange represents that: (1) Except for the requirement under Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum monthly trading volume of at least 250,000 shares, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 under the Act[9] for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance,[10] and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to ICUs and in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.[11]

Detailed descriptions of the Funds, the Indexes, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Trust's Registration Statement[12] or on the Web site for the Funds (*http://www.ssgafunds.com*), as applicable.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5),[14] 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The proposed rule change will allow the listing and trading of the Fund on the Exchange, which the Exchange believes will enhance competition among market

[5] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[6] 15 U.S.C. 78(l).

[7] The Exchange will seek the voluntary consent of the issuer of the Fund to be delisted from NYSE Alternext US and listed on the Exchange. The Exchange notes that its approval of the Fund's listing application would be required prior to listing.

[8] The Exchange states that the Indexes fail to meet the requirement of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) that component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum monthly trading volume of at least 250,000 shares. The Exchange states that, as of October 7, 2008, for SPDR S&P Emerging Markets Small Cap ETF, SPDR S&P International Small Cap ETF, and SPDR DJ Wilshire International Real Estate ETF, component stocks that in the aggregate account for 89.59%, 86.25% and 88.95% of the respective index weights each had a minimum monthly trading volume of at least 250,000 shares.

[9] 17 CFR 240.10A–3.

[10] The Exchange may obtain information for surveillance purposes via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of ISG. The Exchange notes that not all Index component stocks may trade on markets that are ISG members. For a list of the current members of ISG, *see http://www.isgportal.org.*

[11] *See, e.g.*, Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (order approving generic listing standards for ICUs based on international or global indexes); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for ICUs and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of ICUs).

[12] *See* Amendment No. 17 to the Trust's Registration Statement for the Funds on Form N–1A, dated January 25, 2008 (Nos. 333–92106 and 811–21145). *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Brian O'Neill, Attorney, Division of Trading and Markets, Commission, dated October 28, 2008.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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 purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange also believes that the proposed rule change is noncontroversial in that the Indexes for the SPDR S&P Emerging Markets Small Cap ETF, SPDR S&P International Small Cap ETF, and SPDR DJ Wilshire International Real Estate ETF fail to meet the requirements set forth in Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) by only small amounts (0.41%, 3.75% and 1.05%, respectively) and the Shares currently satisfy all of the other generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) and all other requirements applicable to ICUs, as set forth in Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs. In addition, the Exchange believes that it has developed adequate trading rules, procedures, surveillance programs, and listing standards for the continued listing and trading of the Shares.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[17] However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing to accommodate trading in the Shares on the Exchange prior to the end of the 30-day period. The Exchange stated that waiver of the 30-day delayed operative date is necessary to accommodate the issuer's timeframe for listing the Shares on the Exchange and will benefit the market and investors by permitting listing and trading of the Shares on the Exchange prior to the 30-day delayed operative date, thereby enhancing market competition.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Given that the Shares comply with all of the NYSE Arca Equities generic listing standards for ICUs (except that the Indexes narrowly miss the requirement that component stocks that in the aggregate account for at least 90% of the weight of the index have a minimum monthly trading volume of at least 250,000 shares), the listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. Therefore, the Commission designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2008–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–113. 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, 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 NYSE Arca. 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–2008–113 and should be submitted on or before November 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26347 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). 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 this requirement.

[18] *Id.*

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58875; File No. SR–NYSEArca–2008–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services

October 29, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') 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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services. The text of the proposed rule change is attached as Exhibit 5 to the proposed rule change filing, is available on the Exchange's Web site at *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 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 IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Royalty Fees section of the NYSE Arca Schedule of Rates and Charges (''Schedule'') by adding a new fee for transactions in Foreign Currency Options (''FCO'').

The Exchange recently filed with the U.S. Securities and Exchange Commission (''Commission'') a proposal that will allow the Exchange to list and trade FCOs.[5] The Exchange intends to license the contract terms governing FCOs from the International Securities Exchange (''ISE'') and in turn list and trade specific ISE proprietary FCO products, commonly known as FX ISE Foreign Currency Options.

As a part of this license agreement with the ISE, NYSE Arca will pay a fee to the ISE, on every FCO contract traded on the Exchange. Effective with this filing, the Exchange will assess a $0.10 Royalty Fee on a per contract basis for Firm, Broker/Dealer, and Market Maker transactions in the following FCOs.

British Pound (BPX), Japanese Yen (YUK), Canadian Dollar (CDD), Australian Dollar (AUX), Euro (EUI), Swiss Franc (SFC).

The Exchange also proposes to amend the existing Schedule in order to expand the group of issues eligible for Post / Take pricing. Currently, NYSE Arca offers market participants a Post / Take pricing model for electronically executed transactions in issues that are included in the Penny Pilot. In addition to the issues included in the Penny Pilot, FCO's will also be traded in one cent increments. The Exchange proposes to modify the Schedule to make FCO's eligible for Post / Take pricing.[6] The Exchange intends to apply this fee structure in conjunction with the launch of trading in FCOs on the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act, in general, and section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Arca. The Exchange is proposing to (i) charge its Users the same royalty fee it pays to the ISE pursuant to its license to list and trade FCOs on the Exchange and (ii) modify the Schedule to make FCO's eligible for Post/Take pricing.

[5] *See* Securities and Exchange Commission Release No. 34–58800, October 16, 2008 (notice of immediate effectiveness of SR–NYSEArca–2008–109).

[6] The Exchange has not yet implemented its Tier 1 Post/Take pricing. As a result, the basic Post/Take pricing structure applicable to electronic executions in Penny Pilot Issues shall apply.

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

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 proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b–4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed on members by the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–117 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–2008–117. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. 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 No. SR–NYSEArca–2008–117 and should be submitted on or before November 26, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26345 Filed 11–4–08; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Kenosha Regional Airport, Kenosha, WI

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 authorize the release of 1.38 acres of the airport property at the Kenosha Regional Airport, Kenosha, WI. The Wisconsin Department of Transportation (WisDOT) is seeking airport property to improve the intersection of Interstate 94 and State Trunk Highway 158. The WisDOT issued an environmental Finding of No Significant Impact on September 11, 1996.

The acreage being released is not needed for aeronautical use as currently identified on the Airport Layout Plan. The acreage comprising this parcel 24 and 24A were originally acquired under Grant Nos. AIP–01–1984 and AIP–02–1985. The City of Kenosha (Wisconsin), as airport owner, has concluded that the subject airport land is not needed for expansion of airport facilities. There are no impacts to the airport by allowing the airport to dispose of the property. The airport will receive the appraised fair market value of $89,700 for the land. 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 December 5, 2008.

ADDRESSES: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/ FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra E. DePottey, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4350/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at Kenosha Regional Airport in Kenosha, Wisconsin and described as follows:

A parcel of land located in Southwest ¼ of the Northwest ¼ of Section 31, T02N, R22E, Town of Somers, Kenosha County, WI.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN, on August 5, 2008.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. E8–26407 Filed 11–4–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier II Environmental Impact Statement: San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans) and the General Services Administration (GSA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for Tier II of a proposed highway project, international port of entry (POE), and possible Commercial Vehicle Enforcement Facility (CVEF) in the East Otay Mesa area of San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Senior Transportation Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, *Telephone:* (916) 498–5065, or Susanne Glasgow, Deputy District Director, Environmental Division, California Department of Transportation, District 11, 4050 Taylor Street, MS–242, San Diego, CA 92110, Telephone: (619) 688–0100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), has previously completed a Phase I EIS (Record of Decision dated October 3, 2008) that resulted in the selection of a preferred corridor for State Route 11 (SR–11) and a preferred location for the Otay Mesa POE. Issuance by the U.S. Department of State (DOS) of a conditional Presidential Permit is also an anticipated outcome of this prior environmental process.

At this time, the FHWA, the GSA, and Caltrans will prepare a Tier II EIS that will evaluate design and operational alternatives for future SR–11, the POE, and a potential CVEF, in the previously selected locations in the Otay Mesa area

[7] 17 CFR 200.30–3(a)(12).

of San Diego County in southern California. This will provide the required environmental documentation for a full Presidential Permit for the POE and allow FHWA/Caltrans and GSA to proceed with acquisition of right-of-way and construction of SR–11 and the Otay Mesa East POE, respectively.

Future SR–11 would begin at approximately the SR–905/SR–125 interchange and proceed easterly approximately 2.1 miles to a new, approximately 100-acre POE. The project will also either determine a route to the existing CVEF that serves the existing Otay Mesa POE to the west or will provide a second CVEF (approximately 20 acres) dedicated to the proposed Otay Mesa East POE. Within the limits of and adjacent to the study area, there are biological resources, planned land uses, paleontological resources, cross-border concerns, and potential traffic management, air quality, and growth issues.

Preliminary Alternatives/Design Variations under consideration include: (1) Taking no action; (2) the option to achieve the project's purpose and need through accommodation of pedestrians, cyclists, transit, and other transportation systems/demand management measures alone, without implementation of SR–11 and the new POE; (3) SR–11 toll implementation options; (4) the options of building two interchanges between SR–11 and local roadways, or one interchange only, with the exact locations of the interchanges to be determined after consideration of public input; and (5) the options of utilizing the existing CVEF at the existing Otay Mesa POE to also serve the proposed Otay Mesa East POE versus construction of a new CVEF adjacent to the new POE. For all alternatives/design variations, transportation systems/demand management measures and options to reduce vehicle idling time, and associated air pollutant emissions at the POE will be analyzed.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies; Native American organizations; private organizations; and citizens who have previously expressed or are known to have interest in this proposal.

During future project development, prior to draft EIS circulation, a public scoping meeting will be held on December 4, 2008, from 5 p.m. to 7:30 p.m. at Ocean View Hills Elementary School, located at 4919 Del Sol Boulevard, San Diego, California. In addition, a public hearing will be held after publication of the draft EIS. Public notices will be given regarding the time and place of the meeting and hearing.

To ensure that the full range of issues relating to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS/EIR should be directed to FHWA and/or Caltrans at the addresses provided above.

Issued on: October 30, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–26365 Filed 11–4–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2008–0048]

Notice of Buy America Waiver Request by the Regional Transportation Commission of Southern Nevada for Bus Rapid Transit Rolling Stock

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver request and request for comments.

SUMMARY: The Regional Transportation Commission of Southern Nevada (RTC) has asked the Federal Transit Administration (FTA) to waive its Buy America requirements to permit it to purchase Bus Rapid Transit Vehicles from Wright Group (Wright) to be designed and manufactured in the United Kingdom. This request comes after the RTC awarded a contract to Wright but before the award of an FTA grant to the RTC. The RTC has asked for a waiver on the dual bases of public interest and non-availability. FTA seeks public comment on whether it should grant RTC's request on the basis of non-availability only. This Notice sets forth the RTC's arguments for a non-availability waiver and seeks comment.

DATES: Comments must be received by November 12, 2008. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2008–0048. All electronic submissions must be made to the U.S. Government electronic site at *www.regulations.gov*. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001.

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2008–0048. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *www.regulations.gov*. For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For questions please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements in 49 CFR Part 661 for fifty (50) Bus Rapid Transit vehicles to be manufactured and assembled in the United Kingdom by Wright Group (Wright) for the Regional Transportation Commission of Southern Nevada (RTC). Because the RTC has already awarded a contract to Wright, it has asked for a post-award waiver.

In its request for a waiver, a copy of which has been placed in the Docket, Nevada RTC describes the benefits ''of introducing and operating visually attractive, advanced technology, high capacity vehicles.'' The RTC states that it ''has largely foregone more expensive light rail, heavy rail, or monorail alternatives.'' As an example, Nevada RTC stated that it ''converted its Downtown Connector Project into a [Bus Rapid Transit] Project, at a

significant cost savings over the prior rail alternatives.''

The source of this waiver request is a 2005–2006 ''Rapid Transit Vehicle'' procurement conducted by Nevada RTC to implement its Downtown Connector Project. The Request for Proposals (RFP) issued by the RTC in November 2005 was for fifty (50) Rapid Transit Vehicles, with two options, each for an additional fifty (50) vehicles. The RTC structured the RFP as a locally funded procurement without imposing many of the standard Federal requirements like Buy America and Cargo Preference. Because of a drop in sales tax revenues, the RTC's local revenue source, the feasibility of funding this procurement with local funds has been significantly diminished. For this reason, the RTC has decided to utilize Federal funds and to seek a Buy America waiver for this vehicle procurement.

The RTC recounts the key points of the proposal and evaluation process as follows:

1. Six (6) firms submitted proposals in response to the RFP: North American Bus Industries (NABI); Alexander Dennis, Ltd (ADL); New Flyer; Advanced Public Transport Systems, BV (APTS); Irisbus/Iveco, and Wright Group (Wright).

2. NABI and ADL were found to not be ''technically acceptable'' because the vehicles proposed did not meet the design criteria in the RFP.

3. New Flyer was found to be non-responsive because it failed to price the option vehicle portion of the order.

4. No challenge or protest was filed regarding either the technical acceptability finding or the non-responsiveness finding.

5. APTS, Irisbus, and Wright were found technically acceptable, and were evaluated and ranked under the criteria set forth in the RFP.

6. A competitive range was established (in accordance with the RFP) consisting of the two highest ranked proposals, Irisbus and Wright. Those two firms were requested to submit Best and Final Offers (BAFOs).

7. Following evaluation of the BAFOs, the RTC decided to divide the vehicle order between Irisbus and Wright (as permitted by the RFP). However, Irisbus subsequently elected not to proceed, and the RTC thereafter entered into a contract with Wright for the entire base order of fifty (50) vehicles, plus an option to purchase 50 additional vehicles.

Because the RTC structured the RFP as a locally-funded procurement, it ''did not request, and did not receive the Buy America certification forms that are normally executed by proposers to indicate their compliance or non-compliance with the Buy America requirements for rolling stock.''

In its request, the RTC notes that ''no responsive and responsible proposal was received offering a product produced in the United States.'' Moreover, ''although Wright is not providing a Buy America-compliant vehicle, it has developed and intends to implement a business plan to achieve compliance with the Buy America requirements.'' It also identifies several important elements of Wright's business plan for achieving compliance with the Buy America requirements in the future, and asserts that while Wright is taking meaningful steps on the path toward compliance, ''from a business point of view, achieving compliance with Buy America is a process that simply cannot be achieved in a single initial sale to a domestic purchaser. Relationships and business arrangements with suppliers must be developed to be able to meet the domestic content requirement, and more importantly, the capacity and means must be established (normally through a relationship with a third party) to be able to meet the requirements of final assembly in the U.S.''

With certain exceptions, FTA's ''Buy America'' requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States. 49 U.S.C. 5323(j)(1). One such exception is if applying the Buy America requirements ''would be inconsistent with the public interest.'' 49 U.S.C. 5323(j)(2)(A). A second exception is if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B).

In arguing for a post-award waiver, the RTC asserts that ''there is no statutory restriction on FTA's authority and discretion to grant a Buy America waiver on a post-award basis, and the granting of a post-award waiver is a reasonable interpretation of the applicable statute and the implementing regulations.'' Specifically, the RTC states, ''the statutory Buy America language in 49 U.S.C. 5323 is a condition on the granting of Federal funds. Thus, as long as the Buy America requirements are met before grant award, the statute is satisfied.''

While FTA appreciates the merits of RTC's request for a post-award Buy America waiver,[1] FTA cannot consider a public interest post-award waiver under these circumstances. First, the award contemplated in FTA's regulations refers to the award between a recipient of FTA funds and its vendor(s). FTA has never interpreted the ''award'' to be defined as the awarding of the FTA grant. Furthermore, only recently has FTA been given the statutory authority to issue post-award waivers as a result of section 3023(i)(5)(C) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). Congress, however, precluded post-award waivers on the basis of public interest, specifying that the only basis for post-award waivers was for non-availability. Consequently, the only post-award waivers granted to date have been on the basis of non-availability in cases in which the contractor has made a certification of compliance with the requirements in good faith but, for reasons not foreseen at the time of the initial RFP, compliance was rendered impossible or impracticable.

''In determining whether the conditions exist to grant a post-award non-availability waiver, [FTA] will consider all appropriate factors on a case-by-case basis.'' 49 CFR 661.7(c)(3). Such factors will include ''the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project,'' 72 FR 53691 (Sept. 20, 2007), and ''may include project schedule and budget.'' 71 FR 69415 (Nov. 30, 2006). In addition, FTA will look to ''existing precedents in public contracting law and practice.'' 71 FR 69416 (Nov. 30, 2006).

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America

[1] RTC presented five arguments in favor of a post-award, public interest waiver:

1. The Buy America waiver is in the public interest because it will promote the entry into the U.S. market of a significant new supplier that will provide a high quality, advanced BRT vehicle.

2. The Buy America waiver is in the public interest because it will promote the implementation of a highly successful BRT project and demonstrate the viability of BRT as an alternative to rail.

3. The Buy America waiver is in the public interest because it will allow the introduction into the U.S. market of a hybrid BRT vehicle with innovative technology.

4. The Buy America waiver is in the public interest because Wright Group has achieved significant U.S. content for this vehicle [of approximately 30%] and is implementing a plan to achieve full compliance.

5. The granting of a Buy America waiver in this case is consistent with other circumstances in which FTA has found it in the public interest to grant a Buy America waiver.

requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance of caution, given the unique circumstances by which a prospective FTA grantee issued a request for proposals without the inclusion of the traditional Buy America clause, intending to fully underwrite the contract using exclusively local funding. Therefore, in order to understand completely the facts surrounding the RTC's request, FTA seeks comment from all interested parties regarding the RTC's justifications. A full copy of the RTC's petition has been placed in docket number FTA–2008–0048, along with a letter written by ISE Corporation supporting the RTC's request. Please submit comments by November 12, 2008. Late-filed comments will be considered to the extent practicable.

Issued this 29th day of October 2008.

Severn E.S. Miller,

Chief Counsel.

[FR Doc. E8–26423 Filed 11–4–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 16, 2008, and comments were due on September 15, 2008. No comments were received.

DATES: Comments must be submitted on or before December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5737; or *e-mail: jean.mckeever@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Capital Construction Fund and Exhibits.

OMB Control Number: 2133–0027.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Forms: None.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. 53501, *et seq.,* and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Annual Estimated Burden Hours: 2,865 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66.)

Issued in Washington, DC, on October 30, 2008.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E8–26427 Filed 11–4–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2008–0166]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 5, 2009.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–XX–XX] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. 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: Complete copies of each request for collection of information may be obtained at no charge from Mike Pyne, Office of Crash Avoidance Standards at 1200 New Jersey Avenue, SE., W43–457 NVS–123, Washington, DC20590. Mr. Pyne's telephone number is (202) 366–4171.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR 571.403, Platform lift systems for motor vehicles and 49 CFR 571.404, Platform lift installations in motor vehicles.

OMB Control Number: 2127–0621.

Form Number: None.

Affected Public: Platform lift manufacturers and vehicle manufacturers/alterers that install platform lifts in new motor vehicles before first vehicle sale.

Requested Expiration Date of Approval: Three years from approval date

Abstract: FMVSS No. 403, Platform lift systems for motor vehicle, establishes minimum performance standards for platform lifts designed for installation on motor vehicles. Its purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts that assist persons with limited mobility in entering and leaving a vehicle. FMVSS No. 404, Platform lift installations in motor vehicles, places specific requirements on vehicle manufacturers or alterers who install platform lifts in new vehicles. Under these regulations, lift manufacturers must certify that their lifts meet the requirements of FMVSS No. 403 and must declare the certification on the owner's manual insert, the installation instructions and the lift operating instruction label. Certification of compliance with FMVSS No. 404 is on the certification label already required of vehicle manufacturers and alterers under 49 CFR Part 567. Therefore, lift manufacturers must produce and insert that is placed in the vehicle owner's manual, installation instructions and one or two labels that are placed near the controls of the lift. The requirements and our estimates of burden and cost to the lift manufacturers are given below. There is no burden to the general public.

Estimated Annual Burden:

• *Estimated burden to lift manufacturers to produce an insert for the vehicle owner's manual stating the lift's platform operating volume, maintenance schedule, and instructions regarding the lift operating procedures:*

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

• *Estimated burden to lift manufacturers to produce lift installation instructions identifying the vehicles on which the lift is designed to be installed:*

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year

• *Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation:*

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year

• *Estimated cost to lift manufacturers to produce:*

—Label for operating instructions—27,398 lifts × $0.13 per label = $3,561.74

—Label for backup operations—27,398 lifts × $0.13 per label = $3,561.74

—Owner's manual insert—27, 398 lifts × $0.04 per page × 1 page = $1,095.92.

—Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

Note: Although lift installation instructions are considerably more than one page, lift manufacturers already provide lift installation instructions in the normal course of business and one additional page should be adequate to allow the inclusion of FMVSS specific information.

Total estimated annual cost = $9,315.32.

Total estimated hour burden per year = 144 hours.

Estimated Number of Respondents: 10.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: October 30, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–26421 Filed 11–4–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35184; STB Finance Docket No. 35185]

East Central Regional Railroad Authority—Acquisition Exemption—Dakota, Minnesota & Eastern Railroad Corporation; State of South Dakota by and Through Its South Dakota Railroad Authority and Its Department of Transportation—Acquisition Exemption—East Central Regional Railroad Authority

East Central Regional Railroad Authority (ECRRA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 15.33 miles of rail line from Dakota, Minnesota & Eastern Railroad Corporation (DM&E) with DM&E retaining subleasehold rights to

continue to conduct operations over the line. The line extends from milepost 145.0 near Yale, SD, to milepost 160.33 near Huron, SD, (the Yale-Huron line), in Beadle County, SD.

Concurrently, the South Dakota Railroad Authority (SDRA) and the South Dakota Department of Transportation (SDDOT), political subdivisions of the State of South Dakota and collectively a non-operating Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 for SDRA to acquire the Yale-Huron line from ECRRA, with ECRRA retaining leasehold rights, and, in turn, for SDDOT to immediately acquire the Yale-Huron line from SDRA.

The applicants expect to consummate the transactions on November 20, 2008.

Following consummation of the transactions, DM&E will remain the operator of the Yale-Huron line by virtue of having retained subleasehold rights in the sale agreement with ECRRA.

The applicants explain that SDDOT will become the ultimate owner of the line so that it can fund necessary rehabilitation of the line pursuant to South Dakota statutes. According to the applicants, the slightly complex transactional structure involved here is due to specific language in the applicable South Dakota statutes making it necessary that ECRRA first acquire the Yale-Huron line from DM&E and then, in turn, transfer the line to SDRA, before it can ultimately be acquired by SDDOT.

The applicants certify that their projected annual revenues as a result of these transactions will not result in the creation of a Class II or Class I rail carrier and further certify that the projected annual revenues of each of the applicants will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 12, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket Nos. 35184 and 35185, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: (1) For ECRRA—Douglas E. Kludt, Churchill, Manolis, Freeman, Kludt, Shelton and Burns, 333 Dakota Avenue, South, P.O. Box 176, Huron, SD 57350; and (2) for SDRA and SDDOT—Myles L. Tobin, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

Decided: October 29, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeff Herzig,

Clearance Clerk.

[FR Doc. E8–26344 Filed 11–4–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35106]

United States Department of Energy—Rail Construction and Operation—Caliente Rail Line in Lincoln, Nye, and Esmeralda Counties, NV

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing concerning the application the Department of Energy (DOE) filed in the above docket. The purpose of the hearing will be to allow interested persons to comment on the application.

DATES/LOCATIONS: The public hearing will take place on December 4, 2008, beginning at 9 a.m., at the Nuclear Regulatory Commission's Las Vegas Hearing Facility—Pacific Enterprise Plaza, Building No. 1, 3250 Pepper Lane, Las Vegas, NV 89120. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, identifying (1) the party represented, (2) the proposed speaker, and (3) the number of minutes requested. Notices of intent to participate should be filed as soon as possible, but no later than November 14, 2008. Following receipt of notices of intent, the Board will release a schedule of speakers for the hearing. In the event that the Board receives more requests to participate than can reasonably be accommodated in a one-day hearing, the Board will give priority to elected officials and current parties of record in the construction application proceeding.

ADDRESSES: Notices of intent to participate in the hearing may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's ''*http://www.stb.dot.gov*'' Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send the filing to: Surface Transportation Board, Attn: STB Finance Docket No. 35106, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Joseph Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: On March 17, 2008, DOE filed an application seeking authority to construct and operate an approximately 300-mile rail line. The line, to be known as the Caliente Line, would connect an existing Union Pacific Railroad Company line near Caliente, NV, to a proposed geologic repository at Yucca Mountain, Nye County, NV.[1] The purpose of this proposed rail line is to allow DOE to transport materials needed to construct the proposed repository as well as spent nuclear fuel and high-level radioactive waste to the completed repository for disposal. DOE has also proposed the line so that common carrier rail service can reach communities situated along the line.

On April 11, 2008, the Board published a **Federal Register** notice (74 FR 20748) announcing DOE's application. The Board, on its own motion, established a procedural schedule with filing due dates longer than those set forth in the Board's regulations. *See* 49 CFR 1150.10(g) and (h). Pursuant to the schedule, parties submitted comments on the transportation aspects of DOE's proposed line, and DOE submitted a reply to the comments. As the transportation record has developed in this proceeding, so has the environmental record. Both records are currently under review at the Board.

At the hearing, the Board will hear testimony concerning DOE's application to construct and operate the rail line. Speakers at the hearing may, but are not required to, bring written copies of their

[1] The proposed repository is not subject to the Board's jurisdiction, and DOE does not seek this agency's authority to construct and operate it.

testimony to the hearing and offer those statements for the record in the proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: October 31, 2008.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E8–26381 Filed 11–4–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 30, 2008.

The Department of the 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 December 5, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1811.

Type of Review: Extension.

Title: REG–150313–01 (NPRM) Redemptions Taxable as Dividends.

Description: This information is necessary to ensure that the redeemed shareholder's suspended basis account is properly taken into account as a loss under the Code or regulations to the extent of the lesser of the amount of the suspended basis account or the gain recognized upon a disposition of other stock in the redeeming corporation.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 1,500 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Nicholas A. Fraser, (202) 395–5887, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E8–26408 Filed 11–4–08; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0580]

Agency Information Collection (Request for Transportation Expense Reimbursement Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 5, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0580'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0580.''

SUPPLEMENTARY INFORMATION:

Title: Request for Transportation Expense Reimbursement (38 CFR 21.8370).

OMB Control Number: 2900–0580.

Type of Review: Extension of a currently approved collection.

Abstract: Children of Vietnam veterans born with spina bifida and receiving vocational training or seeking employment may request reimbursement for transportation expenses. To be eligible, the child must provide supportive documentation of actual expenses incurred for the travel. VA uses the information collected to determine if the child is unable to pursue a vocational training or employment without travel assistance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 27, 2008, at pages 50673–50674.

Affected Public: Individuals or households.

Estimated Annual Burden: 63 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 50.

Estimated Total Annual Responses: 600.

Dated: October 28, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26356 Filed 11–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0519]

Agency Information Collection (Locality Pay System for Nurses and Other Health Care Personnel) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 5, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human

Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0519'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or *e-mail: denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0519.''

SUPPLEMENTARY INFORMATION:

Title: Locality Pay System for Nurses and Other Health Care Personnel, VA Form 10–0132.

OMB Control Number: 2900–0519.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0132 is used to collect data from the Bureau of Labor Statistics or other third party industry surveys to determine locality pay system for certain health care personnel. VA medical facility Directors use the data collected to determine the appropriate pay scale for registered nurses, nurse anesthetists, and other health care personnel.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 29, 2008 at page 51049.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 263 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 351.

Dated: October 29, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26357 Filed 11–4–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Agency Information Collection (Request for Supplies (Chapter 31—Vocational Rehabilitation)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 5, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0061'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0061.''

SUPPLEMENTARY INFORMATION:

Title: Request for Supplies (Chapter 31—Vocational Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for veterans in rehabilitation programs. The official at the facility providing rehabilitation services to the veteran completes the form and certifies that the veteran needs the supplies for his or her program and that the veteran does not have the requested item in his or her possession and the veteran certifies that he or she is not in possession of any of the supplies listed on the form.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 27, 2008, at pages 50672–50673.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit, and farms.

Estimated Annual Burden: 12,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,000.

Dated: October 28, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26358 Filed 11–4–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
November 5, 2008

Part II

Department of the Interior

Fish and Wildlife Service

46 CFR Parts 20 and 21

Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations; Final Rule and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

[FWS–R9–MB–2008–0113; 91200–1231–9BPP–L2]

RIN 1018–AI07

Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and Record of Decision.

SUMMARY: Various populations of light geese (greater and lesser snow geese and Ross's geese) have undergone rapid growth during the past 30 years, and have become seriously injurious to their habitat, habitat important to other migratory birds, and agricultural interests. The U.S. Fish and Wildlife Service believes that several of these populations have exceeded the long-term carrying capacity of their breeding and/or migration habitats and must be reduced. This final rule sets forth regulations that authorize measures to increase harvest of certain populations of light geese. In addition, the rule revises the regulations for the management of overabundant light goose populations and modifies the conservation order that will increase take of birds from such populations. The Record of Decision is also published here.

DATES: This final rule will go into effect on December 5, 2008. The force and effect of the rules made applicable by the Arctic Tundra Habitat Emergency Conservation Act ceases upon the effective date of the final rules adopted here (Pub. L. 106–108, Sec. 3).

ADDRESSES: 1. Copies of the Final EIS are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP–4107, Arlington, VA 22203.

2. The public may inspect comments during normal business hours in Room 4107, 4501 North Fairfax Drive, Arlington, VA.

3. You may obtain copies of the Final EIS by downloading it from our Web site at *http://www.fws.gov/migratorybirds/issues/snowgse/tblcont.html.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409 (*see* **ADDRESSES**).

SUPPLEMENTARY INFORMATION: We regulate the taking of migratory birds under the four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada), Mexico, Japan, and Russia. Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Acts authorize and direct the Secretary of the Interior to allow hunting, taking, killing, etc., of migratory birds subject to the provisions of, and in order to carry out the purposes of, the four migratory bird treaties.

The 1916 treaty with Great Britain was amended in 1999 by the governments of Canada and the United States. Article II of the amended U.S.-Canada migratory bird treaty (Treaty) states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with conservation principles that include (among others): To manage migratory birds internationally; to sustain healthy migratory bird populations for harvesting needs; and to provide for and protect habitat necessary for the conservation of migratory birds. Article III of the Treaty states that the governments should meet regularly to review progress in implementing the Treaty. The review shall address issues important to the conservation of migratory birds, including the status of migratory bird populations, the status of important migratory bird habitats, and the effectiveness of management and regulatory systems. The governments agree to work cooperatively to resolve identified problems in a manner consistent with the principles of the Treaty and, if the need arises, to conclude special arrangements to conserve and protect species of concern. Article IV of the Treaty states that each government shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. In particular, the governments shall, within their constitutional authority, seek means to prevent damage to such birds and their environments and pursue cooperative arrangements to conserve habitats essential to migratory bird populations. Article VII of the Treaty authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests.

Population Delineation and Surveys

Greater snow geese, lesser snow geese, and Ross's geese are referred to as ''light'' geese due to the light coloration of the white-phase plumage morph, as opposed to true ''dark'' geese such as the white-fronted or Canada goose. We include both plumage variations of lesser snow geese (white, or ''snow'' and dark, or ''blue'') under the designation light geese. Dark phase Ross's geese exist but are uncommon.

Waterfowl managers frequently base management activities on the delineation of populations. In most instances, populations are delineated according to where they winter, whereas others are delineated based on location of their breeding grounds. For management purposes, populations can comprise one or more species of geese. Administrative flyway boundaries also are used to describe population ranges. In our October 12, 2001, proposed rule (66 FR 52077) and the Final EIS, we provided detailed descriptions of light goose species, delineation of various populations, and surveys that we use to monitor the status of the following populations: Greater snow geese, Mid-Continent Population (MCP) of light geese, Western Central Flyway Population (WCFP) of light geese, Western Population of Ross's geese (WPRG), Pacific Flyway Population of lesser snow geese (PFSG), and Wrangel Island Population of lesser snow geese. We refer to the combination of MCP and WCFP birds in the mid-continent region as Central/Mississippi Flyway (CMF) light geese. Procedures for obtaining a copy of the EIS are described in the **ADDRESSES** section of this document.

Population Status and Goals

Population goals for various light goose populations are outlined in the North American Waterfowl Management Plan (NAWMP; U.S. Department of the Interior *et al.* 1998). In addition, Flyway Councils have set population goals for light geese they manage within their geographic boundaries. We compare current population levels to NAWMP population goals to demonstrate that most light goose populations have increased substantially over what is considered to be a healthy population level. We are not suggesting that light goose populations be reduced for the sole purpose of meeting NAWMP population goals.

Greater snow geese—The spring population estimate of greater snow geese increased from approximately 25,400 birds in 1965 to 1,019,000 birds in 2007 (Reed *et al.* 1998, Reed *et al.* 2000; U.S. Fish and Wildlife Service

2007). The population growth rate during 1965–2007 was 8.0% per year, which if sustained will result in a population over 2 million by 2015, and nearly 3 million by 2020. The Atlantic Flyway Council population objective, as well as the North American Waterfowl Management Plan (NAWMP) spring population goal for greater snow geese is 500,000 birds (U.S. Dept. of the Interior *et al.* 1998). Therefore, the population estimate of 1,019,000 birds in 2007 (U.S. Fish and Wildlife Service 2007) is 103% higher than the Atlantic Flyway Council and NAWMP goals.

Lesser snow geese—Lesser snow geese are frequently encountered together with Ross's geese on breeding, migration and wintering areas, thus complicating survey efforts. Winter indices of MCP and WCFP light geese include both of these species. Field studies indicate that MCP light geese are composed of approximately 94% lesser snow geese and 6% Ross's geese (U.S. Fish and Wildlife Service 2007). The WCFP of light geese is composed of approximately 79% lesser snow geese and 21% Ross's geese. The winter index of MCP light geese (lesser snow and Ross's geese, combined) increased at a rate of 3.5% per year from approximately 777,000 birds in 1970, to a peak of nearly 3 million birds in 1998. Following implementation of regulations to increase light goose harvest in 1999, the MCP winter index declined to 2.2 million in 2006, but rebounded to 2.9 million in 2007 (U.S. Fish and Wildlife Service 2007). The NAWMP winter index goal for MCP lesser snow geese is 1 million birds. The Central and Mississippi Flyway Councils have set an upper management threshold (winter index) of 1.5 million for MCP lesser snow geese. The lesser snow goose portion of the peak MCP winter index in 1998 was 198% higher than the NAWMP goal, and 98% higher than the management threshold adopted by the Flyway Councils. Following implementation of regulations to increase harvest in 1999, the MCP winter index for lesser snow geese declined to approximately 2.1 million birds in 2006, but rebounded to 2.7 million in 2007. The 2007 index of lesser snow geese is still 80% higher than the Flyway Council management threshold and 70% higher than the NAWMP goal. The 2000 winter index of WCFP lesser snow geese was 77% higher than the NAWMP winter index goal of 110,000 birds. Flyway Councils have not set a threshold for WCFP lesser snow geese. Following implementation of regulations to increase harvest in 1999, the winter index of the number of WCFP lesser winter geese declined to approximately 111,000 birds in 2006 but rebounded to 135,000 in 2007; still 23% higher than the NAWMP goal.

The NAWMP does not contain a winter index goal for lesser snow geese in the Pacific Flyway (PFSG), but does contain a goal of 200,000 birds for breeding lesser snow geese in the western Arctic. Approximately 76% of lesser snow geese that nest in the western Arctic migrate to PFSG wintering areas (Hines *et al.* 1999). The number of breeding lesser snow geese on surveyed colonies in 1976 was 169,600 birds (Kerbes *et al.* 1999). During the period 1976–2002, the number of breeding lesser snow geese increased at an annual rate of 5.2%, to the most recent estimate of 579,700 birds (Canadian Wildlife Service, unpublished data). This estimate is 190% higher than the NAWMP goal for breeding lesser snow geese in the western Arctic. Including additional non-breeding birds, the minimum total number of lesser snow geese in the western Arctic was approximately 753,700 birds in 2002. In 1999, Hines *et al.* suggested a proactive approach to management of western Arctic lesser snow geese by stabilizing the population at its (then) current level of approximately 500,000 birds, before it escapes control via normal harvest.

Ross's geese—The NAWMP does not contain separate population goals for MCP and WCFP Ross's geese. However, the NAWMP and Pacific Flyway Council (Pacific Flyway Council 1992) utilize a total continental goal of 100,000 breeding Ross's geese. The estimate of 619,100 breeding Ross's geese in the central and eastern Arctic in 1998 was 519% higher than the NAWMP and Pacific Flyway goal. The Pacific Flyway Council also has adopted a continental winter index goal of 150,000 Ross's geese (Pacific Flyway Council 1992). In 2000, the combined winter index total of 408,750 Ross's geese in the MCP, WCFP, and WPRG geographic ranges was 172% higher than the Pacific Flyway Council goal (U.S. Fish and Wildlife Service 2007).

Goose Impacts on Habitats and Other Species

We described the impact of light geese on natural and agricultural systems for various breeding, migration, and wintering areas in our DEIS and FEIS on light goose management and in the October 12, 2001, proposed rule (66 FR 52077). Also, we described the impacts of habitat damage on some local nesting populations of birds, as well as the potential role that light geese may play in outbreaks of avian botulism. Due to the volume of technical information on these issues, we refer the reader to the FEIS and proposed rule for specific details. Procedures for obtaining a copy of the FEIS are described in the **ADDRESSES** section of this document.

Management Recommendations

The Arctic Goose Habitat Working Group of the Arctic Goose Joint Venture recommended a short-term management goal of stabilizing the greater snow goose population at between 800,000 to 1 million birds (Giroux *et al.* 1998a). However, a reduction of the population below this level was recommended if natural habitats continue to deteriorate, or if measures taken to reduce crop depredation do not achieve desired results (Giroux *et al.* 1998a). The Canadian Stakeholders Committee in Quebec adopted a population goal of 500,000 birds to address continued habitat degradation and agricultural depredations in the St. Lawrence valley (Arctic Goose Joint Venture Technical Committee 2001).

In 1997, the Arctic Goose Habitat Working Group recommended a management goal of reducing the number of light geese in the mid-continent region (primarily MCP and WCFP lesser snow and Ross's geese) by 50% (Arctic Goose Habitat Working Group 1997). This suggests a reduction of the combined winter index of MCP and WCFP light geese from the winter 1996/1997 value of 3.1 million to approximately 1.6 million birds.

Light Goose Harvest

Prior to 1999, we attempted to curb the growth of light goose populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Treaty. Despite liberalizations in regular-season regulations, the harvest rate (the percentage of the population that is harvested) for light goose populations traditionally had been low. Low hunting mortality has contributed to population growth, which further reduced the harvest rate. The decline in harvest rates prior to 1999 indicated that traditional harvest management strategies were not sufficient to stabilize or reduce population growth rates. On February 16, 1999 (64 FR 7507; 64 FR 7517), we authorized new methods of take and a conservation order for light geese in the Central and Mississippi Flyways. These regulations were temporarily withdrawn (June 17, 1999; 64 FR 32778) to prevent further litigation, but were soon reinstated by passage of the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) in November

1999. During 1999–2006, the total harvest of light geese in the Central and Mississippi Flyways during the regular hunting season and conservation orders (combined) has ranged from 1.2 to 1.5 million birds. We believe this magnitude of harvest is sufficient to reduce light goose population levels to desired management levels.

Environmental Consequences of Taking No Action

We fully analyzed the No Action alternative with regard to light goose management in our FEIS, to which we refer the reader (U.S. Fish and Wildlife Service 2007). Implementation of the No Action alternative would require that special light goose regulations authorized by the Arctic Tundra Habitat Emergency Conservation Act be revoked. Therefore, light goose populations would resume growth under the No Action alternative. In summary, most light goose populations will continue to increase at rates anywhere from 5–15% per year, depending on the population. We expect breeding colonies to expand spatially as habitat becomes destroyed in core areas. Birds will begin to exploit new areas and repeat the pattern of habitat destruction and colony expansion. In the case of greater snow geese, we expect the population to exceed the ability of migration habitats to support them. Concurrently, we expect goose damage to agricultural crops to increase.

Even if natural causes result in declines of goose populations, it will take habitats a prolonged time period to recover, especially in the Arctic. A variety of other bird species will be negatively impacted as the habitats they depend on become destroyed by light geese. As population densities increase, the incidence of avian cholera among light geese and other species is likely to increase. Significant losses of other species, such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may occur. This may result in reduced hunting, birdwatching, and other recreational opportunities.

Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population, which likely will result in increased gosling mortality and may cause the population to decline precipitously. Impacts such as physiological stress, malnutrition, and disease in goslings have been documented, and observations of such impacts are increasing. However, it is not clear when natural population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing light goose hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat, which likely will take decades.

In the near term, existing light goose hunting seasons would continue under the No Action Alternative. We have attempted to curb the growth of light goose populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in light goose numbers, the harvest rate (the percentage of the population that is harvested) would decline even though the actual number of geese harvested has increased. The decline in harvest rate indicates that traditional harvest management strategies, which would continue under the No Action alternative, are not sufficient to reduce population growth rates.

Environmental Consequences of Preferred Action

We fully analyzed our preferred action in the FEIS on light goose management, to which we refer the reader for specific details (U.S. Fish and Wildlife Service 2007). In summary, implementation of regulations to increase harvest of light geese will reduce various light goose populations to levels we believe are more compatible with the ability of habitats to support them. Furthermore, habitats upon which other species depend will be preserved. Experts feel that nonlethal techniques would be ineffective at significantly reducing the populations within a reasonable timeframe to preserve and protect habitat (Batt 1997). We prefer to implement alternative regulatory strategies designed to increase light goose harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures.

Implementation of this rule will reduce the number of light geese in the Central and Mississippi Flyways (primarily MCP and WCFP light geese) by 50%. This suggests a reduction of the combined winter index of MCP and WCFP light geese from 3.1 million in 1997 (the year the management objective was established) to slightly less than 1.6 million. During 1999–2002, we acquired experience with regulations similar to those contained in this rule. We determined that implementation of new light goose regulations increased harvest of light geese in the Central and Mississippi Flyways by 41% during 1999–2002 (U.S. Fish and Wildlife Service 2007). We did not include harvest estimates after 2002 in this analysis due to changes in harvest survey procedures. Population modeling indicated that an annual harvest of 1.4 million birds is required to reduce the number of CMF light geese by 50% (Rockwell and Ankney 2000). The estimated harvest of CMF light geese in the U.S. during 1999–2002 ranged from 0.9 to 1.4 million birds. The estimated harvest of light geese in Ontario, Manitoba and Saskatchewan (combined) during 1999–2002 has ranged from 123,000 to 152,000 birds. Therefore, the total harvest of CMF light geese during 1999–2002 ranged from 1.0 to 1.5 million birds. Although a certain proportion of geese harvested in Saskatchewan would have migrated to the Pacific Flyway, the harvest of CMF light geese in North America during 1999–2002 approached, and sometimes exceeded, the annual harvest of 1.4 million birds that is required to reduce the population by 50%. Any harvest in excess of 1.4 million birds in a given year reduces the amount of time required to reach population reduction goals (Rockwell and Ankney 2000). Implementation of these regulations would maintain an annual continental harvest of approximately 1.4 million CMF light geese until management goals are achieved.

Because the winter index of CMF light geese does not represent the entire population, the true population size will be much higher than 1.6 million following a reduction program. Using an adjustment factor of 1.6 (Boyd *et al.* 1982), we estimate that a winter index of 1.6 million would correspond to nearly 2.6 million breeding birds in spring. Adding 30% for nonbreeding birds brings the total population to a minimum of 3.3 million birds following a population reduction program. We believe a population level of 3.3 million birds is more than adequate to ensure the long-term health of MCP and WCFP light goose populations, while still providing for nonconsumptive and consumptive uses of the light goose resource by humans.

The greater snow goose population will be reduced from its peak level of nearly 1,017,000 birds, to the management goal of 500,000 birds. The harvest rate for greater snow geese in the Atlantic Flyway during 1999–2002 ranged from 17% to 24% (U.S. Fish and Wildlife Service 2004). Based on information from the Central and Mississippi Flyways during 1999–2002 (see above), we estimate that authorization of new methods of take (regular season) and a conservation order in the U.S. portion of the Atlantic

Flyway would result in a 41% increase in U.S. harvest of greater snow geese. A 41% increase in U.S. harvest would result in only a 10–12% increase in the continental harvest rate, because the majority of the harvest occurs in Canada. We estimate that implementation of new regulations in the United States would result in a continental harvest rate of 26% for greater snow geese (U.S. Fish and Wildlife Service 2007). Starting with the spring population of 1,016,900 birds in 2006 and applying a harvest rate of 27%, we estimate that the greater snow goose population would be reduced to the goal of 500,000 birds by approximately 2013 (U.S. Fish and Wildlife Service 2007). The magnitude of the impact of this rule is subject to change, depending on the actual population size immediately prior to implementation of any new regulations, size of regular season harvest, and the magnitude of special spring harvest measures in Quebec.

At this time, we do not anticipate population reduction actions for either Pacific Flyway lesser snow geese, or the Western Population of Ross's geese. However, Hines *et al.* (1999) suggested a proactive approach to management of lesser snow geese that breed in the western Arctic that would stabilize the population at its (then) current level before it escapes control via normal harvest. We will implement special regulations to increase take of light geese in the Pacific Flyway if it becomes evident that damage to habitats in the western Arctic necessitates control of light geese that breed there. Any population control actions for light geese in the Pacific Flyway should be designed to minimize negative impacts to Wrangel Island lesser snow geese, which historically have not fared as well as other light goose populations.

Although our intention is to significantly reduce some light goose populations in order to relieve pressures on breeding and/or migration habitats, we have designed it so that these efforts will not threaten the long-term status of these populations. We will carefully analyze and assess the status of light goose populations on an annual basis, using the winter index, periodic photo surveys in the Arctic, banding data, and other surveys, to ensure that the populations are not over-harvested.

We believe that a reduction of certain light goose populations will relieve negative habitat pressures on other migratory bird populations that occur on light goose breeding and wintering grounds and other areas along migration routes. By arresting habitat damage by light geese, other species will not be forced to seek habitats elsewhere, thus avoiding potential decreases in their reproductive success. Further, we expect that, by decreasing the numbers of light geese on wintering and migration stopover areas, the risk of transmission of avian cholera to other species will be reduced.

References Cited

A complete list of references cited is contained in our Final EIS document, and is also available upon request from the Division of Migratory Bird Management (see **ADDRESSES**).

Public Comments and Responses to Significant Comments

We received public comments from 414 private individuals, 24 Federal, State or Provincial agencies, 1 State Representative, 6 Tribal groups, 4 Flyway Councils, and 8 nongovernmental organizations. The majority of comments submitted did not stipulate whether the comments pertained to our proposed rule or the DEIS. Instead, comments tended to focus on certain aspects of our light goose management program in general. Therefore, we have treated comments to both documents together. Below, we provide our responses to comments on the DEIS and proposed rule. Because of the highly interrelated public processes with the proposed rule, DEIS, and FEIS, as an aid to the reader, we have in large part replicated comments we received on the DEIS and our responses contained in the June 2007 FEIS. Due to space considerations, we have provided responses here only to major comments received and refer the reader to the FEIS for responses to all public comments we received. Copies of the public comments are available upon request from the U.S. Fish and Wildlife Service, Division of Migratory Bird Management. Where appropriate, we summarized comments that revolved around a central theme and itemized them as single comments. For some technical or lengthy comments, we have included direct quotes from the comment in order to avoid mischaracterization of the comment.

We received public comments from 414 private individuals. Forty of the individuals made comments during public hearings. A majority (57%) of individuals supported some method of control of light goose populations. Of the 238 individuals that supported population reduction, very few advocated direct agency control. Approximately one-half of those individuals supporting population reduction submitted a form letter containing the following statements: They are concerned hunters and conservationists who care about the burgeoning population of snow geese, which are in need of help to save them from massive population decline; the population has exploded to alarmingly high levels due to changes in agricultural practices and the birds are now a menace to farmers; the population is destroying fragile arctic tundra habitat beyond repair; the management option of letting nature run its course is a no-win situation because the population will crash and millions of farming dollars will be lost and hundreds of thousands of acres of irreplaceable tundra will be destroyed; direct agency control would be costly and inefficient; and, finally, the conservation order approach (including legalization of electronic calls, unplugged shotguns, and extended shooting hours) should be used as a cost-effective way to reduce the population. Another 43 individuals submitted comments simply stating that they supported Alternative B for managing light geese. The remaining comments that indicated support for population reduction centered primarily on making recommendations for changes in methods of take allowed for harvesting light geese, liberalization of regulations during the regular goose season, and expansion of hunting opportunity on government lands.

Most individuals that advocated the No Action alternative opposed any liberalization in regulations that would result in increased harvest of light geese. Many of the comments from individuals opposing management action consisted of a form letter, or portion of the same form letter, containing the following statements: They are strongly opposed to liberalized regulations for snow geese and Ross's geese, which include extending the hunting season, opening wildlife refuges to increased hunting opportunities, and permitting normally illegal hunting methods such as electronic calls and unplugged shotguns; the geese are being blamed for ''damaging'' their ''winter breeding grounds'' (sic), when in reality the geese continue to play a normal role in their ecosystems, modifying vegetation as they normally would; goose reproduction in many areas of the Arctic has already declined in response to reduced food as part of natural population regulation; and finally, that only non-lethal methods of population control should be implemented.

(1) The Environmental Protection Agency (EPA) reviewed the DEIS and stated that they did not identify any environmental concerns with our preferred alternative (Alternative B),

and that the document provides adequate documentation of the potential environmental impacts. The EPA recommended that, following selection of a management approach, the Service should carefully monitor its implementation and remain open to exploring other options as necessary and appropriate. The EPA assigned a rating of Lack of Objection to the DEIS.

We will carefully monitor light goose populations and their habitats following implementation of new management approaches.

(2) The Canadian Wildlife Service (CWS) commented that they, and a clear majority of scientists and managers who have provided information to them, feel that intervention is required to reduce overabundant populations of greater and lesser snow geese. CWS stated that non-intervention would not be a responsible choice. CWS acknowledges that Ross's geese are numerous in comparison to historical numbers and contribute proportionately to the habitat damage observed in conjunction with snow geese. CWS stated that, although Canada has not included Ross's geese in special conservation measures at this time, they would consider regulations to include this species if further experience shows that it is necessary.

We agree that intervention is required and will consult with Canada upon implementation of our management actions. We also agree that Ross's geese are at record high levels and that they are contributing to habitat damage. Consequently, we have chosen to include Ross's geese in our current proposal for management action.

(3) CWS stated that Alternative B is consistent with actions currently being taken in Canada and should be pursued first in order to increase harvest rates in the United States before looking at options involving direct population control. However, CWS indicated that, if Alternative B did not prove successful, direct control may be necessary at some time in the future. Furthermore, assuming success in our approach, the two Federal agencies need to jointly consider approaches for backing away from extraordinary special methods of control as soon as possible.

We have chosen Alternative B as our preferred alternative. If this alternative proves to be unsuccessful at reducing light goose populations, we will consult with Canada to evaluate other management options. We agree that, once population goals are achieved, an exit strategy should be implemented. As we have indicated in Section 4.2.2, certain maintenance regulations may need to remain in place in order to prevent populations from rebounding after population goals are achieved. For example, the conservation order may be suspended once the goal for a particular population is reached. However, additional harvest beyond what would normally be expected with regular goose seasons may be required to prevent the population from rebounding. In such a case, special regulations (*e.g.*, use of unplugged shotguns, electronic calls) can be implemented during the regular season to increase harvest. However, use of such regulations would still require that other waterfowl and crane hunting seasons, excluding falconry, be closed.

(4) The U.S. Geological Survey (USGS) commented that the weight of scientific evidence indicates that several populations of lesser snow geese have increased to such an extent that they present a threat to Arctic breeding habitats. In addition to lesser snow geese, other light goose species (greater snow and Ross's geese) have exhibited similar trends in exponential growth. Some of their populations may currently be contributing to the degradation of Arctic habitats. Scientific evidence indicates that several populations of light geese should be considered overabundant and management actions are required to reduce these populations. The USGS recommends adoption of Alternative B as the most appropriate for short-term management. The available scientific evidence indicates that Alternative A would be ineffective and the other alternatives would be extremely costly and logistically difficult.

Thank you for your comments.

(5) The USGS commented that current science is insufficient to support the statement that lesser snow and Ross's geese are ''known carriers'' of the bacterium that causes avian cholera (DEIS page 64). Preliminary scientific evidence supports this conclusion, but further research is required.

We have modified our characterization of the status of lesser snow and Ross's geese from ''known carriers'' of the bacterium to suspected carriers. As the USGS states, preliminary scientific evidence supports the theory that these species are indeed carriers of the bacterium. We continue to believe that growing populations of light geese increase the likelihood of cholera outbreaks.

(6) The USGS commented that additional scientific information is needed to determine the migration and wintering carrying capacity and habitat degradation impacts of greater snow geese on habitats described in section 3.2.2 of the DEIS.

We agree that additional research will improve our knowledge of the carrying capacity of such habitats. The information provided by Giroux *et al.* (1998) suggests that the carrying capacity of such habitat (whatever it is) has been exceeded.

(7) The USGS commented that preliminary scientific evidence suggests that harvesting greater snow geese during spring in Quebec may negatively affect their body condition and thus reproduction. This raises the question of whether similar patterns may occur in nontarget species that are subjected to this disturbance. Further research may be required to address this concern in all the alternatives.

Conducting further scientific research to obtain information not currently available is beyond the scope of this EIS process. In the Final EIS we have incorporated the findings of recent research on the effects of the spring conservation harvest on greater snow geese. We note that the observed decline in body reserves of greater snow geese on spring staging areas in Quebec was thought to be a result of increased disturbance and reduced access to agricultural foods due to the spring harvest. This supports our contention that light goose populations have increased due to an agricultural food subsidy, which has caused increases in winter/spring survival and reproductive success in light goose populations. We do not view reductions in spring body condition or reproduction of light geese as undesirable. If such factors can help to reduce the population, they should be encouraged until population goals are achieved. Feret *et al.* (2003) indicated that greater snow geese *sometimes* form mixed feeding flocks (*e.g.*, with Canada geese), and hypothesized that the negative impact of the spring harvest could also potentially affect other species. The number of breeding pairs in the Atlantic Population of Canada geese has increased 14% per year during 1997–2006 (U.S. Fish and Wildlife Service 2006), including years in which the spring harvest of greater snow geese has occurred. We note that Canada geese would be the species most likely to be affected by light goose hunting activities, and there is no evidence that this nontarget species has been affected by spring harvest of snow geese. Changes in habitat management and hunting programs on Service refuges take into account the potential effects on nontarget species. Some refuges have chosen not to implement changes in light goose hunting because the refuge manager believed that disturbance to nontarget species possibly would occur. Because hunting for light geese usually takes place in field situations, we

believe that nontarget waterbirds would be unaffected by such activities.

(8) The Central Flyway Council (CFC) expressed opposition to the original four alternatives as written because they are mutually exclusive. The CFC supported Alternative B with modifications through 2005, but felt that Alternatives C and D should be implemented in an additive fashion if progress was not made towards habitat recovery and reducing Central/Mississippi Flyway light goose populations. The CFC stated that a new alternative should be developed if Alternative B cannot be modified to include additional control strategies. The Atlantic (AFC), Mississippi (MFC) and Pacific Flyway Councils (PFC) supported implementation of Alternative B. However, the AFC and MFC urged the Service to plan on implementing Alternatives C and D if management goals are not achieved.

We have retained Alternative B as our preferred alternative. However, we have developed and analyzed Alternative E, which is a new alternative that contains aspects of Alternatives B, C, and D, as suggested by the CFC. This two-phased approach would implement aspects of Alternative B first. Phase two of Alternative E contains aspects of Alternatives C and D and would be implemented if deemed necessary. Under this alternative, actions implemented during phase one would continue if phase two is implemented.

(9) The CFC recommended that decision criteria and a timetable for implementing Alternatives C and D should be developed in advance. These criteria should include habitat trends, light goose population trends, and the effects of overabundant light geese on other species of wildlife.

In developing each of the analyzed alternatives, we wrote them as if they would be implemented immediately upon completion of the EIS process, if chosen as the preferred alternative. Alternative E was written such that phase one would be in place for at least a 5-year period before an evaluation would be made about the necessity of implementing phase two. That evaluation would consider the trajectory of the light goose populations being targeted for reduction. Unfortunately, there are insufficient data available at this time to allow development of specific decision criteria with regard to habitat trends. Habitat studies specified in the Science Needs Documents of the Arctic Goose Joint Venture must be implemented in order to generate data that can be used in developing decision criteria.

(10) The CFC commented that the EIS should be clarified to provide for implementation of actions to resolve geographic or site-specific problems with light goose populations. Potentially, Central/Mississippi Flyway populations may be reduced to overall goals, yet specific populations may remain above desired levels in certain areas of their range.

Our preferred alternative advocates reduction of the number of Central/Mississippi Flyway light geese by 50%. It is clear that in some breeding areas such as La Perouse Bay the ability of the habitat to support geese has been exceeded. However, geese from northern breeding colonies utilize such sites on their northward migration and, therefore, add to habitat damage caused by geese that breed at the site. A general reduction of the number of Central/Mississippi Flyway light geese will help alleviate damage to sites being impacted most severely. The only method of further reducing the number of birds that use such sites is to implement direct control on the breeding grounds in Canada (Alternatives D or E). However, direct control in Canada would have to be implemented by the Canadian Government.

(11) The Ontario Ministry of Natural Resources commented that adoption of the no action alternative is not a responsible approach to the management of these species and habitats. The Ministry also stated that alternatives involving direct agency control are not viewed as the most effective approach at this juncture. With respect to Alternative D, there is significant concern regarding the capacity of the appropriate agencies to deliver a management program that is of sufficient scope and intensity to achieve the desired results.

We agree that the no action alternative is not a responsible approach to light goose management. Alternatives involving direct control will be costly, and it is not likely that agencies can acquire sufficient resources to implement such programs in sufficient scope or intensity.

(12) Many State agencies suggested that methods of take for light geese should be expanded to include a variety of methods, such as use of live decoys, rallying, herding, hazing, model airplanes, rifles, and pistols.

Authorization of new methods of take for light geese in 1999 (*i.e.*, electronic calls, unplugged shotguns, shooting hours one-half hour after sunset) represented a radical departure from decades of strict regulation of waterfowl harvest. Substantial support was expressed during our public scoping process for use of these methods to reduce light goose populations. However, such authorizations were also met with substantial negative public sentiment as well. Arguments for and against various methods often include one's personal view of ethical and non-ethical methods of take, which is not amenable to objective analysis. We believe that our proposed balance of authorizing new, and continued prohibition of other, methods of take is a reasonable compromise. Although authorization of additional methods of take may increase the harvest of light geese somewhat, we believe that such an expansion would be outweighed by erosion of public support for our light goose management program. Furthermore, temporary authorization of numerous methods of take will make it more difficult to enforce prohibition of such methods when they are no longer needed.

(13) The Nebraska Game and Parks Commission (NGPC) commented that the Service must be prepared to justify impacts on nontarget species if/when direct control management actions are implemented. They supported the use of those direct control measures that minimize the impact to other species, but believe that collateral damage is unavoidable in actual operations. The NGPC also commented on this issue and stated that the Service should be prepared to accept significant loss of other wildlife species during control operations in order to reduce light goose numbers. Where possible, attempts should be made to minimize impacts to other species.

In our description of alternatives, we stated that direct control activities should be undertaken such that they do not adversely affect other migratory birds or any species designated under the Endangered Species Act as threatened or endangered. Doing so will require inspection of control activity sites for the presence of nontarget species to determine whether activities should proceed. In situations where live-trapping is used, nontarget species can be released unharmed. If sharpshooters are employed, we believe that impacts on nontarget species will be avoided. At this time we do not believe it is acceptable to undertake control activities that would also result in significant loss of other wildlife species.

(14) A State representative from Delaware commented that snow geese have caused serious damage to crops on his farm and those in the surrounding area. The representative also expressed concern for damage that snow geese are causing to local salt marshes, and the

effects of overabundant geese on the well-being of many other plants, animals, and fish. A concern was also expressed for the possibility of the spread of avian cholera from geese to the chicken industry. The representative fully supports Alternative B and called on the Service to open more of Prime Hook NWR and Bombay Hook NWR to snow goose hunting.

We believe that implementation of Alternative B will reduce the greater snow goose population to desired levels and alleviate damage to agricultural crops and reduce the likelihood of a cholera outbreak. Prime Hook NWR allows ample opportunities to hunt snow geese in 26 marsh blinds during the waterfowl season. Also, field hunting is allowed on 5 different zones on the refuge during the late goose season. The refuge feels they are providing hunting opportunity in areas where it is feasible to hunt snow geese, and in a fashion that is compatible with other hunting programs on the refuge. Bombay Hook NWR staff report that they have provided snow goose hunting opportunity that far exceeds demand at this time. The refuge is close to the maximum of acreage that can be opened to hunting while still providing for the needs of other migratory bird species.

(15) The Assembly of First Nations, representing 633 First Nations across Canada, supported Alternative B as the most humane and least wasteful option, and expressed their concern for light goose threats to other animals and plants, as well as light geese themselves, owing to the destruction of their habitat and food sources in the north. The AFN also commented that the options of allowing for a commercial hunt by Aboriginal people and altering U.S. farm practices (*e.g.*, reducing waste grain) and policies should not be dismissed from consideration. The AFN believes that a commercial hunt by Aboriginal people would support economic development, encourage young people to stay on the land and would support their traditional lifestyle.

With regard to a commercial hunt by Aboriginal people, we point out that the Canadian Wildlife Service does not support development of general commercial activities and take for the purpose of light goose control. They do not wish to establish a short-lived commercial opportunity that could have serious long-term effects on community support for and compliance with regulations. We support the position of CWS and also do not support establishment of commercial activities for light goose control in the United States. With regard to U.S. farm practices and policy, we reiterate that we have no control over U.S. farm policy and believe that attempts to consult with the Department of Agriculture to effect changes solely for the purpose of addressing the light goose issue would have such a minimal chance of success that it is precluded from being a viable management alternative.

(16) The Wampanoag Tribe of Gayhead (WTG) suggested that other indigenous nations of Canada should be contacted to enlist their assistance in the population control program.

We have no authority to enlist the help of indigenous nations of Canada in a light goose population control program. Only the Canadian Wildlife Service, or other Canadian government entity, can undertake such action. The CWS has encouraged native groups, such as the Arviat Hunters and Trappers Organization, to increase their harvest of light geese.

(17) The WTG commented that the number of allowable days for hunting light geese should be expanded to the fullest extent allowed under the MBTA. Splits between other waterfowl hunting seasons should be utilized as light goose only seasons.

Current light goose hunting frameworks already provide the maximum number of days for light goose hunting allowed by the MBTA. Furthermore, light goose only seasons between other season splits are allowed, providing that all other waterfowl and crane hunting seasons, excluding falconry, are closed.

(18) The WTG commented that the requirement to close all other waterfowl and crane hunting seasons when new methods of take are authorized for light geese is disruptive to sportsmen and subsistence users of waterfowl species.

We believe that a closure of all other waterfowl and crane hunting seasons, excluding falconry, is necessary to minimize the take of nontarget species when light goose regulations are implemented.

(19) The WTG commented that, under the USFWS Native American Policy and Executive Orders of the President of the United States, the Service is compelled to consult with Tribal governments on a government-to-government basis. How has the Service complied with these directives in this process?

The Service has a long history of working with Native American governments in managing fish and wildlife resources (USFWS 1994). A list of Native American tribal governments was obtained through our Tribal liaison and was used to distribute the DEIS to tribal governments for formal review and comment.

(20) The hunting season on light geese should not be extended.

The Service is not proposing to extend the light goose hunting season. We do not have the authority to extend the normal hunting season beyond the March 10 season ending date stipulated by the Migratory Bird Treaty Act. We are proposing implementation of a conservation order for the control of overabundant light geese in accordance with Article VII of the Migratory Bird Treaty.

(21) Several individuals expressed opposition to new regulations that allow taking of light geese on wildlife refuges, which they feel should be a safe haven for all wildlife.

The proposed regulations do not open refuges or new areas on refuges to hunting. That type of action would be proposed on a specific refuge by refuge basis. The National Wildlife Refuge System Improvement Act of 1997 amended the National Wildlife Refuge System Administration Act of 1966 to establish that compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation are the priority public uses of the Refuge System. The National Wildlife Refuge System Administration Act of 1966 stipulates that up to 40% of the area of refuges acquired, reserved, or set apart as inviolate sanctuaries may be opened to migratory bird hunting. The Fish and Wildlife Improvement Act of 1978 amended the 1966 Act to permit the opening of greater than 40% of the area of these refuges to migratory gamebird hunting when it is determined to be beneficial to the species hunted. Therefore, the portion of our light goose management proposal that encourages, where appropriate, increased hunt programs on National Wildlife Refuges is consistent with the purposes of the refuge system.

(22) One citizen commented that public hearings held during the EIS process were held only in rural areas, thus preventing any metropolitan, city, or suburban dwellers from ever commenting on any plans. Therefore, the Service is engaging in biased hearings, soliciting comments only from hunters and farmers.

We held a number of public scoping meetings throughout the United States prior to publication of the DEIS (see **Federal Register** Notice of Meetings in Appendix 2). In addition to Washington, DC, the majority of these meetings were held in large metropolitan areas and often were held in State capitals: Sacramento, CA, Bismarck, ND, Baton Rouge, LA, Dover, DE, Bloomington,

MN (suburb of Minneapolis/St. Paul), and Kansas City, MO. Only 2 of the 9 meeting locations were held outside of large metropolitan areas (Pomona, NJ, and Rosenberg, TX); however they were easily accessible to large population centers. Therefore, we do not believe that meeting locations produced any type of bias in comments submitted by citizens. Another series of public meetings on the DEIS were held in most of the same locations as the scoping meetings. We provided an extensive public comment period during the EIS process that provided all citizens a means to submit written comments on our proposals, either through the mail or electronically to our e-mail address, regardless of the citizen's geographic location.

(23) Several individuals commented that the Service proposal appears to be the result of lobbying by the gun, hunting, and guide/tourist industries.

No lobbyist from any gun, hunting, or guide/tourist industry contacted the Service to urge development of our proposal. Our management plan was based on results from work conducted by research scientists, population and habitat surveys, and on recommendations by scientists from the Arctic Goose Habitat Working Group of the Arctic Goose Joint Venture.

(24) The Service reports that six times as many people participate in nonhunting activities related to migratory birds as compared to hunting them. Times have changed and so must the Service and wildlife agencies.

We examined socioeconomic considerations in section 3.5 of the EIS and reported that more citizens participate in non-hunting than hunting activities related to migratory birds. However, the impacts of overabundant light goose populations will negatively affect a variety of bird species that non-hunters as well as hunters enjoy viewing. Furthermore, revenues generated by Duck Stamp sales go towards acquisition of habitats that support many non-game and game species. The fact that many citizens do not hunt does not negate the fact that increasing harvest is a legitimate wildlife management tool. Furthermore, this issue does not pertain to hunting seasons; the proposed program is designed to protect nesting, migration, and/or wintering areas.

(25) Claims of habitat destruction are based on habitats where no systematic scientific data had been gathered. There were small fenced areas to document effects of heavy goose grazing on plants, but that is not representative of normal ecosystems.

In section 3.2.1 we cited the study by Jano *et al.* (1998) that systematically documented the loss of vegetation at La Perouse Bay using satellite imagery. We also cited the study conducted by Kotanen and Jefferies (1997), who utilized fenced vegetation sampling plots, as well as adjacent un-fenced plots, along a transect at La Perouse Bay to document habitat damage. Fenced and un-fenced plots were sampled during 1986, 1989, and 1995 to systematically document vegetation changes in response to goose grazing. The un-fenced plots were indeed representative of the ''normal ecosystem,'' which in reality was being degraded by geese. We also cited the study conducted by Kerbes *et al.* (1990) that systematically sampled vegetation along the west coast of Hudson Bay during 1993–95 to demonstrate the impact of geese on plant communities. Intensive studies by Iacobelli and Jefferies (1991) and Srvivastava and Jefferies (1996) were cited as they described the effects of goose grubbing on soil salinity and degradation of vegetation stands. Therefore, the comment that claims of habitat destruction are not based on systematically collected scientific data is unwarranted.

(26) The use of a generalized management strategy for all snow geese ignores scientific distinctions and is contrary to historical tradition of managing snow geese.

We have developed population goals for several populations of light geese that incorporate geographic and biological characteristics of each population. Most of these goals have been developed independently through either interactions with Flyway Councils or through the North American Waterfowl Management Plan. Both of these avenues have continued to recognize historical designations of populations and taxa. Light goose regulations will be flyway-specific, and thus have the ability to manage light goose populations with due regard to their status.

(27) The current population goal of 500,000 greater snow geese is much lower than the competing goal set by the Arctic Study Group of 800,000 to 1 million birds, and is based on incomplete information.

Our population goal of 500,000 birds is in agreement with the Atlantic Flyway Council and North American Waterfowl Management Plan population objectives. In 1997, the Arctic Goose Habitat Working Group recommended a short-term management goal of stabilizing the greater snow goose population at between 800,000 to 1 million birds. However, the Working Group recommended a reduction of the population below this level if natural habitats continue to deteriorate, or if measures taken to reduce crop depredation do not achieve desired results. Recently, the Canadian Stakeholders Committee in Quebec adopted a population goal of 500,000 birds to address continued habitat degradation and agricultural depredations in the St. Lawrence valley. The Arctic Goose Joint Venture Technical Committee has adopted the lower population goal. Managers believe the population must be reduced to reduce agricultural depredations, prevent further degradation of migration habitats, and prevent potential degradation of breeding habitats that could occur under high population levels.

(28) Dispersing and fragmenting the flocks can result in a reduction of nonconsumptive use and cause economic loss. Diminishing the flock may incite political action/complaints by millions of bird watchers who journey to see geese. Nonconsumptive users may demand a revision of how the United States treats wildlife.

We examined the socioeconomic impacts of our preferred alternative in section 4.6.2. Implementation of this alternative would preserve the long-term health of light goose populations by slowing the rate of habitat degradation and avoiding a potential population crash, especially in the mid-continent region. Damage to agricultural crops would also be reduced. Nonconsumptive users of light geese may be slightly affected by lower overall populations. However, light geese would continue to migrate in relatively large flocks and visit traditional migration and wintering areas. Therefore, we believe the short-term economic impact of this alternative on nonconsumptive users would be minimal, and the long-term economic impact would be positively enhanced due to maintenance of healthy populations. By maintaining healthy populations we are fulfilling our trust responsibility to U.S. citizens, rather than allowing populations to further damage habitats, cause agricultural depredations, and potentially crash.

(29) The concern about marsh eat-outs by greater snow geese is based on incomplete and incorrect information about historical processes. Kortright gave accounts of eat-outs during the 1930s and 1940s.

Although we stated that the impact of greater snow geese on coastal marshes of the U.S. mid-Atlantic coast appeared to be relatively small prior to the 1960s,

we did not state that eat-outs were nonexistent during that time. Clearly the occurrence and impacts of eat-outs have increased as the population has increased.

(30) The Service is using scare tactics with regard to the issue of avian cholera, as if we are all going to die because of avian cholera. How many people have died of avian cholera?

Avian cholera is a disease that does not affect humans. Our concern with avian cholera is the potential for outbreak of the disease, which could kill thousands of light geese as well as many individuals of other bird species.

(31) One individual commented that the revised treaties relied upon in this EIS are in violation of the existing treaties in force with Mexico, Japan, and the Soviet Union and in violation of the 1918 treaty negotiated with Canada.

The comment is confusing and unclear, as revised treaties are the treaties in force. Regardless, this is a very important comment as it gives us a chance to explain in more detail why this action is in accordance with the authority provided to the Secretary by law. It raises the issue of compatibility with the migratory bird conventions applicable to the birds (light geese) that are the subject of this regulation. The Secretary of the Interior (having due regard for a number of factors that are addressed in this EIS) is authorized and directed by the Migratory Bird Treaty Act to determine when it is compatible with the conventions to issue regulations to allow the take of these birds and their nests and eggs. Of the four migratory bird conventions, three are applicable to the adoption of these regulations: the *Convention Between the United States and the Union of Soviet Socialist Republics* (now Russia) *Concerning the Conservation of Migratory Birds and Their Environment* (1978), the *Convention for the Protection of Migratory Birds and Game Mammals* with Mexico (1937), and the *Convention for the Protection of Migratory Birds* with Canada (1916). With respect to the fourth, the *Convention Between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment* (1974), there is no positive evidence that the birds that are the subject of these regulations migrate between Japan and the United States (*see* Article I, Section 1.).

When two or more conventions are applicable to our adoption of regulations, we must ensure the action is compatible with each or, where conventions have provisions on the same specific issue, the more stringent of the provisions. Each of the conventions, negotiated at different times with four different countries, address particular issues important to each country and, because of differing perspectives and needs, contain agreements on similar actions that are presented in uniquely different ways.

The convention with Canada, in addition to including requirements regarding the authorization of the hunting of migratory game birds, the taking of migratory birds for scientific, educational, propagative, and other purposes, and the harvesting of migratory birds and eggs by indigenous inhabitants of Alaska, allows for permitting the killing of migratory birds that are seriously injurious to agricultural or other interests in any particular community (see Article VII). It is our conclusion from all of the information available to us, and which is summarized and referenced in this Environmental Impact Statement, that several light goose populations have exhibited extraordinary growth. Due to their feeding actions, overabundant light geese have become seriously injurious to habitats on various breeding, migration, and wintering areas and in some situations have also caused damage to agricultural crops. Consistent with the same article of the convention, the regulations also provide for the suspension of the permission granted by the regulations to take these birds when such permission is no longer needed to prevent the injuries to the habitat. In furtherance of the overall objectives of the convention, these regulations will help ensure the preservation of these and other migratory birds covered by this convention.

The convention with Mexico provides that for migratory game birds the parties agree to establish ''close seasons'' (unspecified periods or lengths) during which migratory game birds may not be taken (*see* Article II). We read this to relate only to hunting because of the specific reference to ''seasons.'' As such, the agreement to establish close seasons does not apply to the adoption of these regulations because this is not a hunting program. It is a management action that is taken in order to reduce the severe habitat damage that light geese are causing on their nesting, migration, or wintering grounds. There are no other applicable provisions in this convention except the overall purpose to protect these birds ''(i)n order that they may not be exterminated.'' The specificity of the regulations with regard to implementation, monitoring, and reporting, coupled with the revocation and suspension provisions, ensure that this requirement will be met.

The convention with Russia, with a somewhat different approach, contains an agreement that the parties will prohibit the taking of migratory birds generally. It then provides for exceptions, one of which is ''(f)or scientific, educational, propagative, or other special purposes not inconsistent with the principles of'' the convention (*see* Article II). Another is for the purpose of protecting against injury to persons or property (see also Article II). These regulations fall within both of these exceptions. The action not only recognizes that birds of common interest to Russia and the United States ''have common flyways, breeding, wintering, feeding, and moulting habitat which should be protected,'' but the action is designed to protect that habitat. We are ''implementing measures for the conservation of migratory birds and their environment and other birds of mutual interest'' by taking actions available to us to prevent further destruction of breeding and feeding habitat by the unusually abundant light geese. (*See* provisions of the convention introductory to the Articles and see Light Goose Management Final EIS for additional authority discussion).

(32) An individual stated that there are violations of the Ramsar Convention and other conventions to which Canada is a party and, therefore, no action should be taken for depredation of any of these geese, because it is an attempt to violate the hunting limitations of the Migratory Bird Treaty Act of 1918. It presents a major federal action to which Canada is in violation of her treaty obligations and deprives other countries of their food supplies and treaty protections.

Our proposed management action is compatible with the relevant conventions. As we described in Chapter 2 of the EIS, implementation of a conservation order is not in violation of any treaty. This is a management action taken under the authority of the MBTA and is compatible with the relevant conventions. Clearly, no country is being deprived of their food supplies or treaty protections.

(33) Calls for massive goose kills are based on the heretofore unchallenged opinion that just one vegetative community is correct for this ecosystem and that this successional stage should be maintained forever. This view is biologically nïave and ecologically narrow-minded.

We have not stated that a single successional stage should be maintained forever. In fact, in section 3.2.1 of the EIS we document the succession of

habitat change in response to isostatic uplift and goose grazing. However, goose damage has proceeded to such an extent in some areas that no vegetative community exists whatsoever. We do not believe that this can be characterized as a normal state of the ecosystem.

(34) Many commentors submitted identical comments to the effect that, ''light geese have been irrationally condemned for sabotaging their winter breeding habitat.''

There is no such thing as a ''winter breeding habitat.'' We have documented habitat destruction for a variety of breeding, migration, and wintering habitats, depending on the light goose population being examined.

(35) Clearly the best option is to have the sportsmen and women of this country and Canada harvest the surplus of snow geese. This method will come at no cost to the tax payers, is extremely effective, and will help lower the population of lesser snow geese to levels that are safe for both the birds and the environment.

Our preferred alternative advocates continuation of regulations that have allowed citizens to increase their harvest of light geese.

(36) Once the snow goose population is controlled, a spring harvest should still be allowed but the number harvested should be limited.

Once our management goals are achieved it is possible that some form of maintenance regulations will need to remain in place to prevent goose population growth from rebounding. This can be done through continuation of special light goose regulations during the regular hunting season or periodic re-implementation of conservation orders if deemed necessary.

(37) Letting geese and other animals starve to death until the population returns to normal is much crueler than increasing harvest.

We believe that taking no action would ultimately be a waste of the goose resource due to population decline and potential collapse, and would also allow much more habitat to be destroyed before the population is reduced.

(38) Direct control options would incur expenses that would be paid out of tax dollars.

We have presented various expected costs to agencies for alternatives that involve direct control. Our preferred alternative will increase harvest through authorization of new methods of take and a conservation order. This management approach will present minimal costs to agencies versus direct control.

(39) An individual asked if the reason the Service required that other waterfowl and crane hunting seasons be closed is because the Service does not trust the average duck or goose hunter to know what they are shooting at.

Our decision to be cautious in the authorization of a conservation order and new methods of take is based on our desire to eliminate or minimize any potential impacts to nontarget species. We believe that closure of other waterfowl and crane hunting seasons will heighten awareness of this concern and cause all hunters to be judicious in bird identification while pursuing light geese.

(40) Throughout much of its 50-page public comment, the Animal Protection Institute (API) contended that the Service has tried to ''demonize'' light geese. The API states that the species is now thought of as a ''flying rat'' or ''tundra maggot''.

The Service believes that this characterization of our treatment of this issue is unfounded and unfortunate. We believe that we have objectively described light goose populations and their impact on the environment. The Service has a mandate to conserve migratory birds, and we believe that our proposed management action is in the best interest of the long-term health of light goose populations and their habitats.

(41) The API commented that the premise that, under no action, light goose populations would be allowed to increase in size is ultimately untenable. No wildlife population has ever increased indefinitely in size, and there is much annual variation in recruitment rates.

Nowhere in the document do we state that light goose populations would increase in size indefinitely. In fact, in our discussion of impacts of the No Action alternative on light goose populations we state the possibility that density-dependent regulation of the population would occur. In section 3.1.9 of the EIS we reviewed documented population responses to habitat degradation. Because light geese can cheat density-dependence by exploiting new habitats, it is not known how long it will take before a particular population will actually decline. The occurrence of annual variation in recruitment rates, which would affect growth of the overall population from year to year, is clearly indicated in the numerous graphs of population size (or indices) we present in sections 3.1.6 and 3.1.7 of the EIS.

(42) The API commented that the Service rejects those historical data that indicate current light goose population sizes are not unprecedented. While the rejection is based on the fact that the early indicators are anecdotal, and thus cannot be compared to current statistics obtained from more objectively employed techniques, there is no logical reason to assume that early estimates must be hugely in error. While we cannot know that light goose numbers were never as high as they currently are, we cannot know that they were not.

We contend that ''historical data'' (*i.e.*, anecdotal accounts, often of only individual flocks of birds) or ''early estimates'' cited do not constitute estimates of the size of light goose populations prior to the implementation of systematic surveys. Accounts of individual flocks, or counts in a very limited geographic area, do not even remotely approach a population estimate. Therefore, a discussion of whether or not such supposed estimates are hugely in error is pointless. In the absence of reliable data and population estimates from pre-survey periods, we must base our management program on information from our systematic surveys that indicate population levels are at historic highs.

(43) The Humane Society of the United States and the Animal Protection Institute submitted lengthy comments that, in part, questioned whether light goose population levels documented in the DEIS are unprecedented. For example, they cited Lynch's (1975) account of approximately 185,000 geese in a single flock at Oyster Bayou (Louisiana) in the late 1930s, but that only 368,000 birds were counted in the entire winter survey of the Mississippi Flyway during 1954/55. They also cited Lynch's (1975) account of apparent declines in light geese using the Mississippi Delta as support for the hypothesis that the number of light geese in the mid-continent region had been at high levels prior to implementation of systematic surveys and that current high levels are not unprecedented.

Lynch's (1975) account of a single flock of 185,000 birds at Oyster Bayou in the late 1930s coupled with the entire flyway count of 368,000 in 1954/55 does not lend support to the hypothesis that goose populations existed at previously high numbers. Geese did not exhibit drastic changes from their tradition of utilizing a narrow band of saltmarsh habitat along the Louisiana coast until the 1940s (Bateman *et al.* 1988). Therefore, the count of 185,000 birds in a single flock during the late 1930s may have represented a large percentage of the entire wintering population. In the 1955 winter count of geese in the entire Mississippi Flyway, 98% of the 368,000

birds were counted in Louisiana (Fronczak 2003). As in 1955, we believe it is highly likely that Louisiana harbored the majority of light geese wintering in the Mississippi Flyway during the late 1930s when Lynch made his observations at Oyster Bayou. Therefore, it is not surprising that he was able to count a large number of birds in a single flock. However, such observations do not support the hypothesis that numbers of light geese previously existed at levels comparable to today.

In his discussion of goose population declines, Lynch (1975) clearly was documenting a decline in the number of birds using the Mississippi Delta region of Louisiana. Lynch cited counts of ''about 300,000'' birds wintering on the Active Delta of the Mississippi during the late 1930s and early 1940s, but aerial surveys of the same region in the 1970s produced estimates of only 50,000 birds. Lynch stated that, ''Obviously the Snows and Blues formerly using this region have dropped greatly in numbers.'' We see no information in these accounts that support the hypothesis that the number of mid-continent light geese previously existed at levels that were as high as, or higher, than those that exist today. Lynch was simply stating that the number of birds using a *specific geographic area* had declined, and that ''perhaps they moved westward to the Vermillion Bay marshes and other portions of southwest Louisiana'' (Lynch 1975: 15). Furthermore, Lynch (1975:24) stated that some declines of geese at specific geographic areas ''undoubtedly reflects geese that now were lingering in inland States for longer periods during fall migration, and making some attempts to overwinter at such places.'' Lynch also cited decreases in reproductive success in the arctic as a potential factor, or that some birds may have shifted their nesting grounds westward, which would cause them to migrate to wintering areas west of the Mississippi Delta (*i.e.*, southwest Louisiana and east Texas). We conclude that any perceived decline in goose numbers in a particular region was primarily a redistribution of goose wintering grounds and not an actual decline in numbers. We reiterate that comparison of anecdotal accounts of light goose population size with data derived from systematic surveys cannot be used to prove one way or another whether populations previously existed at levels comparable to today. However, we must base our management decisions on reliable survey data that indicate steady population growth.

(44) The HSUS claims that some researchers, in particular R. Alison, have suggested that separating the Mid-Continent Population of light geese into Central Flyway and Mississippi Flyway components will show that, while light goose populations in the Central Flyway have increased, those in the Mississippi Flyway have declined in the past decade.

We disagree that the data from the two flyways indicate that the number of MCP light geese in the Mississippi Flyway has declined. Prior to the implementation of the conservation order in the 2 Flyways (1999), the number of MCP light geese in the Mississippi Flyway increased from 1.0 million in 1988 to over 1.9 million in 1998. During the same time period, the number of MCP light geese in the Central Flyway portion of the range increased from 736,000 birds in 1988 to over 1.0 million birds in 1998. Clearly, the number of MCP light geese in each Flyway has been increasing.

(45) The API referred to work conducted by J.F. Scarry and C.M. Scarry that documented the occurrence of snow geese (presumably greater) in archaeological sites in North Carolina. From the frequency with which these bones occur in some coastal regions, and given the lack of pump-action shotguns available to early native people, it seems prudent to at least acknowledge the likelihood that abundant populations of greater snow geese occurred before, leaving no lasting ''damage''.

Presence of greater snow goose remains in archaeological sites merely points to the existence of the species prior to European settlement. We do not believe the presence of such findings can indicate a likelihood that the population once existed at a level as high as, or higher, than that which exists today.

(46) The API questioned our use of information regarding changes in the winter distribution of light geese as it relates to habitat carrying capacity and population growth (DEIS Figure 3.13). They stated that it is contentious to assume that the carrying capacity of the ''original coastal marsh wintering range'' is somehow equal to what existed prior to the 20th century. A wintering range expansion does not equal an increase in bird numbers.

We do not understand the concern that prompted the comment. In our review of migration and wintering ecology of CMF light geese, we merely reviewed the available information concerning goose distribution and habitat use on the Gulf Coast. We did not state that range expansion equates to population growth. However, the available information suggests that geese formerly restricted their activity to a narrow band of brackish salt marsh. This pattern was exhibited until the 1920s in Texas, and the 1940s in Louisiana (Bateman *et al.* 1988). We have no way of documenting the carrying capacity of the coastal marshes prior to the 20th century, or even during the 1920s and 1940s. As the comment acknowledges, the original coastal marsh range has undergone enormous change in the last century. However, much of that change has undoubtedly occurred after the 1920s and 1940s. Therefore, it is not inconceivable that the carrying capacity of the marshes immediately prior to the 1920s was still fairly high. Our review focused on the increased use of agricultural land by geese once such land came into closer proximity to the wintering marshes. We believe that use of this new habitat allowed geese to increase the amount of food available to them, which likely led to increased survival rates and contributed to population growth.

(47) The API commented that the Service has failed to adequately demonstrate a need to reduce light goose populations within the context of Article VII of the U.S.-Canada Migratory Bird Treaty. The ''extraordinary conditions'' mentioned in Article VII have not been identified. If alleged habitat damage is the result of extraordinary conditions, then what are those conditions? Does extraordinary refer to phenomena such as global warming or grain subsidies?

We have already documented how light geese have become seriously injurious to arctic breeding habitats. Furthermore, we believe that high population levels documented through extensive survey methodology, combined with habitat damage, represents an extraordinary condition. In addition, we have not relied solely on Article VII of the Treaty to support our call for reduction of light goose populations. As we outlined in section 1.6 of the FEIS, Article II of the amended Treaty states that migratory bird populations shall be managed in accord with conservation principles that include (among others) provision for and protection of habitat necessary for the conservation of migratory birds. We have concluded that reduction of light geese will result in a protection of habitat essential to light geese, as well as other migratory birds. Article IV of the Treaty states that each government shall use its authority to take appropriate measures to preserve and enhance the environment of migratory birds. We contend that our proposal will

help preserve those portions of the arctic environment inhabited by light geese. Article VII authorizes take of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Therefore, our proposal to increase take of light geese to alleviate this situation is warranted.

(48) The HSUS cited Robertson and Slack's (1995) caution that recent and projected future declines in rice acreage, and increases in urbanization in Texas coastal areas, may result in sudden lesser snow goose declines. The HSUS urged the Service to consider trends in agricultural production and further wetland losses in the Final EIS.

We have reviewed the paper cited by the HSUS, which we were not aware of during preparation of the DEIS. We note that Robertson and Slack (1995) presented a variety of potential scenarios, or combination of scenarios, for future lesser snow goose populations wintering on the Texas coast in response to changes in agriculture and urbanization. One scenario involves snow geese simply expanding their winter range in search of suitable feeding habitat. Alternately, geese may continue to winter in the same region and use remaining agricultural and/or natural marsh habitats. If birds are unable to find suitable habitats, winter mortality may increase through starvation and disease. In addition, productivity may decline if birds begin spring migration in poor condition and they are unable to obtain nutrient reserves necessary for reproduction. Despite changes in Texas agriculture and urbanization cited by Robertson and Slack, the number of light geese in the mid-continent region has continued to increase. Given the ability of light geese to adapt to new food supplies on the wintering grounds, we believe it is more likely that geese will expand their wintering range in search of suitable feeding habitats, rather than experience a sudden decline. Finally, we note Robertson and Slack (1995) indicated that empirical data do not exist to allow predictive modeling of the snow goose population wintering on the upper Texas coast. Examination of trends in agricultural production and wetland losses is beyond the scope of this document. Considering all of the above, if light goose populations declined to levels consistent with our management goal we would take action to suspend a conservation order.

(49) The HSUS commented that the DEIS considers all mid-continent light geese—and in some cases all North American light geese—as if they constituted a single population, regardless of the location of their Arctic breeding grounds.

In section 3.1.1 of the EIS, we clearly defined three different taxa of light geese in North America: Greater snow geese, lesser snow geese, and Ross's geese. Furthermore, in section 3.1.3, we clearly defined the various populations of light geese found in North America and described their breeding, migration, and wintering ranges. We noted in the DEIS that the term mid-continent light geese is used simply to refer collectively to the Western Central Flyway Population (WCFP) and Mid-Continent Population (MCP) of light geese that migrate through and winter in the mid-continent region. Our analysis of Alternatives A–E clearly presented the anticipated impacts on several distinct populations of light geese.

(50) The HSUS commented that some breeding colonies have experienced recent sharp declines even as others are increasing in size. Therefore, hunting pressure distributed widely throughout the United States (even if primarily concentrated within a particular flyway) will not necessarily result in targeted decreases of goose populations in those Arctic breeding areas that are being impacted most severely.

Breeding areas that are presently being impacted most severely by mid-continent light geese are located on the western Hudson Bay coastline. These sites are impacted the most because geese from a variety of breeding colonies migrate through and utilize the region on their way to more northern breeding sites. This feeding pressure is in addition to that resulting from birds that normally breed on such sites. Therefore, if population reduction is targeted only at sites where habitat degradation is most severe, it will necessitate removal of birds that would normally breed at a variety of colony sites; some of which are far removed from the site of habitat damage. Consequently, we believe that reduction of goose numbers in the United States will alleviate pressure on breeding habitats in a manner very similar to that which would occur if population reduction occurred only at damaged breeding sites. The HSUS did not specify which breeding colonies they believed to have experienced sharp declines. It is true that the number of geese nesting at *traditional* colony sites at La Perouse Bay has declined due to habitat degradation; however, the number of geese in the overall population nesting at La Perouse Bay and surrounding Cape Churchill area has increased (Cooch *et al.* 2001).

(51) The HSUS commented that the proposed increase in hunter-induced mortality will most likely lead to compensatory population growth. Decreased local competition for food and increased reproductive output and survival will likely bring these populations quickly back up to levels perceived to be too high. Thus the plan may either result in no change in foraging pressure on breeding grounds or will allow only brief respites from high-intensity goose foraging. In contrast, allowing a natural crash in the goose population, or, in the short term, dispersal away from heavily grazed areas via the No Action Alternative may be more likely to allow for long-term habitat recovery.

Our preferred alternative calls for retention of maintenance regulations that would ensure that harvest remains at a magnitude sufficient to prevent populations from rebounding once they were lowered to desired levels. We believe that allowing further habitat damage to occur while waiting for a population crash to occur at some time in the potentially distant future would be irresponsible. The benefit of immediately reducing the population to management goal levels, which still provide for the existence of numerous birds, would far outweigh the negative impacts associated with cumulative habitat destruction that would occur prior to any population crash that would occur in the distant future.

(52) The HSUS commented that the Service implies that the plant community inside the fenced goose exclosure areas represents a natural plant community and, therefore, is a picture of what the breeding grounds should resemble. However, the exclosed area lacks a dominant herbivore and increased plant biomass within exclosures does not indicate the ecosystem contains a destructively high density of geese. Exclosure studies are generally useful in determining the relative effects of herbivore populations on the composition of the local plant community and should not lead one to believe that the exclosed area represents what is ''normal''.

We presented results of exclosure studies to illustrate two points. The first point being that sites that receive goose exclosures *after* being destroyed by the feeding action of geese do not experience re-vegetation even after 15 years. The second point is that experiments where goose exclosures are placed on intact stands of vegetation show that geese remove nearly all vegetation on sites where they can feed outside of the exclosure. Obviously, the purpose of such experiments is to remove (via exclusion) a dominant herbivore from a site; however, we did not state that vegetative stands within

fenced areas represented a ''normal'' situation. We agree with the comment that exclosure studies are generally useful in determining the relative effects of herbivore populations on the composition of the local plant community. The results of the studies we cited show that geese can reduce the composition of the local plant community to zero or near-zero species.

(53) The API commented that the Service states there may be little or no chance of plant recovery within 25–50 years after geese remove vegetation. However, due to isostatic uplift such areas will be much further inland after that amount of time. Newly emerging sea floor begins innocent of marsh vegetation, but the Service would have us believe that it will forever remain that way.

Studies indicate that, once vegetation is removed by geese, soil chemistry changes such that revegetation is affected. In some cases the soil on such areas is eroded away completely. Therefore, it does not matter where on the coastal marsh/upland habitat continuum the land resides in 50 years. Conditions likely will not be favorable for any type of plant establishment. Thus, if the land was further inland it would seem that upland species would be affected. We have never stated, or tried to have the reader believe, that newly exposed sediments would not be colonized by marsh plants. However, in the DEIS (page 52) we did state that, ''although isostatic uplift creates new salt marsh habitat as new land is exposed, the rate of increase of new habitat is too slow to keep up with the rate of habitat destruction caused by the increasing light goose population.''

(54) The HSUS commented that a normal process of plant community succession in the salt-marsh habitats tends to produce a shift in plant types, from the preferred goose food plants, Puccinellia and Carex species, to Calamagrostis and Festuca species. Foraging activities of lesser snow geese and Ross's geese at low to moderate densities delay this succession but do not prevent it. Isostatic uplift and frost heave development both gradually reduce salinity over time, further favoring the switch to plants that are salt-intolerant and not preferred by geese. Tidal action also deposits dicotyledon seeds in goose foraging areas (Hik *et al.* 1992). According to Hik *et al.* (1992) this successional change has the result that ''swards dominated by Puccinellia * * * are irreversibly lost from the system,'' however, the authors define the length of this irreversible loss as 10–50 years. This is a long time from the perspective of a human but is not a considerable amount of time for an Arctic salt marsh ecosystem as a whole. Overgrazing of some types of preferred food plants due to a high goose population may actually speed up a shift in plant community composition. Regardless of the rate, this represents a normal ecological process that eventually results in a much more diverse secondary plant community. When grazing is accompanied by intensive grubbing, the grubbing and erosion may expose bare sediment and may require a longer period of time (probably on the order of 50–150 years) for the aforementioned assemblages of plants to reestablish (Hik *et al.* 1992, Srivastava and Jefferies 1996).

We note that Hik *et al.* (1992) utilize the term ''destruction'' when describing the impact of high numbers of geese on the vegetation communities they studied. With regard to the statement that isostatic uplift and frost heave development gradually reduces salinity over time (Hik *et al.* 1992), we note that this passage comes from Hik *et al.*'s paragraph describing plant community change *in the absence of goose grazing* (Hik *et al.* 1992:403). In our reading of Hik *et al.* (1992), nowhere do we see that they define the length of ''irreversible loss'' as 10–50 years. Instead, Hik *et al.* (1992:404) state that, ''As time proceeds * * *, the swards dominated by *Puccinellia* (A) are irreversibly lost from the system (10–50 years), due to the effects of isostatic uplift.'' We interpret this statement to mean that, as isostatic uplift acts on the system, it will take 10–50 years for the *Puccinellia* swards to be converted to other plant communities. However, once the *Puccinellia* sward is lost it will not come back in 10–50 years (as suggested by the commentor)—it is ''irreversibly lost from the system'' (Hik *et al.* 1992). We sincerely doubt that Hik *et al.* would use the term ''irreversible'' if the *Puccinellia* sward could re-establish in as little as 10 years. Hik *et al.* (1992) further state that, ''Where extensive grubbing and grazing have occurred in recent years on the La Perouse Bay salt-marsh, the plant assemblages characteristic of the states we have described become extinct * * * across the entire salt-marsh an estimated 50% of the vegetation has disappeared between 1985 and 1991 as a result of grubbing and subsequent erosion. Erosion of organic layers and sediments makes it unlikely that the assemblages of plants will re-establish within 50 years. These changes coupled with those associated with the progressive effects of isostatic uplift indicate that when such areas are recolonized the species will be different from the former assemblages. Hence, on a longer time scale (c. 100–150 years) non-equilibrium conditions prevail.'' This statement does not mean that those plant assemblages necessarily *will* re-establish after 50 years. We acknowledge that some type of plant community may eventually (whether it be 50, 100, or 150+ years) establish itself on sites formerly destroyed by geese. However, information available to us suggests that such communities will have diminished value to wildlife.

(55) The API commented that, to the lay public, ''desertification'' conjures images of the Saharan sand dunes, or perhaps Catalina Island once the goats got through with it, but that is, emphatically, not what is happening even with regard to the most extreme and extensive removal of vegetation by ''light'' geese anywhere on their breeding grounds.

The end point of a desert is not intended by the term desertification (Jefferies *et al.* 1995:204). We are using the term as applied by Jefferies *et al.* (1995).

(56) The HSUS has produced video documentation during a flyover of the coastal regions from La Perouse Bay west and then north. The video shows vast areas of intact vegetational communities. On-the-ground still photos taken by the Animal Protection Institute show areas of mudflat interspersed with green vegetation taken within view of the fence of the research encampment. On the other hand, the Service document shows dramatic pictures of desert-like barrens and a satellite image of cumulative damage at La Perouse Bay ''caused by light geese'' over a ten-year period. The red areas in the satellite photo are not desert; they are areas either bare of above-ground vegetation or are incomplete vegetation where complete means vegetation not significantly acted upon by light geese and/or other herbivores.

We have viewed the HSUS video and believe that videos taken at the altitudes flown would not be able to demonstrate a difference between an ''intact vegetational community'' and a damaged or overgrazed area. It is believed that 65% of the 135,000 acres of coastal salt marsh habitat is damaged or overgrazed, however from the video this impact may not be detected. For example, an overgrazed area may have been converted to a moss carpet after removal of sedges by geese; however such an area would look green from the air. Only 35% of the marsh habitat is considered destroyed. Therefore, the video would potentially show a large amount of habitat mistakenly identified

as an intact vegetation community. With regard to the satellite photo, the Animal Protection Institute failed to mention that the caption of this photo stated that in 1973 the areas in red had *complete* vegetation cover. In 1993 such areas were either bare soil or incomplete plant cover. Figure 3.20 of the DEIS also shows green vegetation interspersed in mudflats. These vegetation patches tend to be willow stands that eventually will die as soil salinity increases, as illustrated on page 35 of Abraham and Jefferies (1998). Furthermore, the satellite photo study documented a 20-year change in vegetation, not 10 years as the comment stated.

(57) The HSUS commented that the reason for increased grubbing by resident and migrant geese at La Perouse Bay appears to be a combination of cooling trend in northern breeding habitats and increased temperatures at more southerly sites. If the increase in the size of the staging population in the southern areas is responsible for alleged habitat damage, then it would appear that increasingly late snowmelt in northern areas and global environment change is causally related to damage in at least some areas. The Service argument that agricultural subsidies are causally related to arctic damage by snow geese is, therefore, flawed.

We have stated that increased numbers of light geese, not climate change or agricultural subsidies, are responsible for habitat damage in arctic and sub-arctic nesting areas. We believe that agricultural subsidies and climate change are plausible causative factors in the growth of light goose populations. Abraham and Jefferies (1997) reviewed the occurrence of climate changes in northern and southern goose nesting areas, and we have incorporated this discussion in the Final EIS. Abraham and Jefferies (1997) reported that the center of the lesser snow goose breeding range has shifted south to areas with a less severe climate (*i.e.*, rather than climate change *in situ*), which would allow for earlier nesting dates. With earlier nest initiation dates and longer growing seasons, higher average annual production would result in population growth of southern colonies such as Cape Henrietta Maria or La Perouse Bay. However, the slow growth of each of these colonies in the first two decades following their establishment argues against this phenomenon as being the sole mechanism to account for population growth. Jefferies *et al.* (1995) also reported on the occurrence of increased number of migrants staging at southern sites in some years due to colder temperature in more northern areas. Regardless of factors that impact the distribution of birds, it is the overall increase in the number of birds that has resulted in habitat damage. Not only has damage been documented on southern sites, but damage has also been documented in northern areas of the central Arctic. Abraham and Jefferies (1997) stated that agricultural subsidies have been the major influence enabling geese to increase in recent decades, whereas climate warming and expanded breeding range were cited as likely secondary causes.

(58) The HSUS commented that, with regard to greater snow geese, damage to freshwater breeding habitats has not been documented and goose numbers appear to be below the estimated carrying capacity of the habitat. Also, greater snow goose colonies do not experience waves of migrant flocks traveling to more northerly colony sites, as happens with habitats in La Perouse Bay. The ecosystems used by greater snow geese may be quite different from saltwater habitats and birds may not be able to expand their breeding range. These differences suggest that greater snow geese may not be capable of creating a large impact on vegetation. There is no justification in terms of breeding habitat vegetation for reducing the greater snow goose population. Despite these differences, compared to the situation in the mid-continent region, the Service concludes that the greater snow goose population will increase as rapidly as birds in the mid-content region. Thus, liberalization of regulations in the Atlantic Flyway would constitute a large-scale preemptive strike that is unfounded.

In section 3.2.1 of the EIS, we described the interaction of greater snow geese and their breeding habitats. At the population levels observed during the mid-1990s, geese maintained the vegetation in a low-level steady state. Unlike the situation where moderate grazing by lesser snow geese on salt-marsh plants can increase plant quality and quantity, grazing by greater snow geese has not shown such an ''overcompensation'' effect. In addition, fecal matter deposited by greater snow geese in freshwater habitat does not appear to have the same fertilization effect that occurs with lesser snow geese in salt-marsh habitats. We do not view the differences in relationships with plants between the greater and lesser snow goose as a valid argument that greater snow geese are not capable of creating a large impact on vegetation. In fact, given the differences cited, it is possible that greater snow geese may have an even greater potential to damage habitat. They simply have not reached the population size where such damage is likely. We forthrightly cited the study by Masse *et al.* (2001) that indicated greater snow geese were below the carrying capacity of habitat on Bylot Island. We note that Bylot Island hosts only about 15% of the total breeding population. In section 3.1.6 of the EIS, we documented that the greater snow goose population was indeed growing *faster* than light goose populations in the mid-continent region. Given the rapid growth rate in the absence of increased harvest, it is clear that the carrying capacity will eventually be reached and likely exceeded if management actions are not implemented. Justification for population management does not need to be restricted to impacts on breeding habitats. We also believe the population needs to be reduced in order to prevent further damage to natural marsh habitats on migration and wintering areas and to reduce agricultural depredations by geese. Therefore, we do not believe the preemptive reduction and stabilization of the population is unfounded

(59) The document does not represent a fair economic assessment with regard to greater snow geese because only data pertaining to agricultural crop depredations are included. Economic impacts from other activities, such as people viewing geese or hunting them, should be included. Omission of such information reflects an inherent bias of the document in favor of further demonizing light geese in support of the Alternative B.

In section 3.5.1 of the EIS, we clearly outline economic impacts associated with snow goose hunting in the U.S. portion of the Atlantic Flyway. Furthermore, in section 3.5.2, we addressed the reasons why it is not possible to determine the economic impacts associated strictly with nonconsumptive uses of light geese in the United States. In the FEIS we have included information from a recent CWS report that examined the economic impact of waterfowl migration through Quebec (Canadian Wildlife Service 2005). The report provided insight to the economic impact of nonconsumptive uses, especially with regard to greater snow geese and Canada geese. The total annual economic benefit of nonconsumptive use of waterfowl migration through Quebec was estimated to be over $24 million (Canadian $$). Of this total, more than $19 million can be attributed to birdwatching activities at four main migration sites in Quebec. Additionally, $5 million annually was generated by two greater snow goose festivals, one Canada goose festival, and operation of associated educational centers

(Canadian Wildlife Service 2005). We also included data on compensation paid to farmers in Quebec merely to point out the increase in depredations that have occurred with increasing numbers of geese. A reduction in the goose population should alleviate such damage while still providing ample opportunity for nonconsumptive users to enjoy views of staging geese.

(60) The API commented that the Service's language with regard to the issue of avian cholera is disingenuous and is designed to mislead the reader into assuming that light geese are exceptionally a causative factor, perhaps ''the'' causative factor, in the occurrence of serious outbreaks of cholera. The Institute questioned why the Service is concerned that whooping cranes are a species ''potentially affected'' by cholera, but that the Service is not concerned about whooping cranes being a ''potentially shot'' species as a result of ''encouraging kill-oriented hunters to shoot long-necked white waterbirds with black wing tips.''

Our language with regard to the issue of avian cholera is the result of examining several scientific publications that point to lesser snow and Ross's geese as being reservoirs for the bacterium that causes the disease. Nowhere in our document do we state that light geese are the only reservoir for the bacterium. We focus on light geese as being a reservoir because (1) the EIS is a document dealing with light goose management and (2) the available scientific papers dealing with this disease continually cite light geese as being prominent carriers. We have included the discussion of whooping cranes as being potentially affected by cholera because we are required to address how special status species may be affected by light geese. Furthermore, the statement that we are not concerned that whooping cranes are a ''potentially shot'' species is unfounded because we specifically deal with that issue in sections 3.3.3 and 4.5.2 of the EIS, with regard to the Whooping Crane Contingency Plan.

(61) The HSUS commented that the link between light geese and avian cholera outbreaks is ''shaky at best''. Samuel *et al.* (1999) cite previous unpublished work suggesting that 50% of adult snow geese infected with *Pasteurella multocida* may survive the infection ''and thus a portion of these birds may be carriers of the bacteria.'' The HSUS stated that ''it is a leap to then assume that the presence of antibodies after an infection necessarily means that an individual is capable of acting as a carrier.'' Even if 5% of the population were carriers of the disease, it is highly unlikely that hunter-induced mortality would significantly reduce the number of carrier birds from the population.

The above comment refers to a statistic about the percentage of infected snow geese following cholera outbreaks on Banks Island in the western Arctic (Samuel *et al.* 1999). In the same paragraph in which the statistic was included, Samuel *et al.* (1999) stated that: (1) Three major outbreaks of cholera occurred at Banks Island between 1991 and 1996; (2) 50% of the birds infected during cholera outbreak survived and thus a portion of these birds may be carriers of the bacteria; (3) there is evidence that cholera has become endemic in Banks Island snow geese; (4) the Banks Island population ''may play an important role in transmitting this disease to other waterbirds, especially to wintering areas where many species are concentrated.'' Also in the same paragraph, Samuel *et al.* (1999) cite other studies indicating that ''snow geese have been suspected of playing an important role in distributing avian cholera because mortality patterns have coincided with snow goose migration in the Central and Mississippi flyways (Brand 1984) and with the arrival of snow geese in California (J.G. Mensik, United States Fish and Wildlife Service, personal communication). In addition, regular mortality has been observed in northward migrating lesser snow and Ross's geese in Saskatchewan (Wobeser *et al.* 1979, 1983) and snow geese have frequently been involved in larger cholera outbreaks.'' In light of the above studies, the Service does not believe it is unrealistic to assume that light geese exposed to the disease can act as carriers. We do believe that reducing the number, and thus density, of light geese will reduce the likelihood of disease outbreaks.

(62) The HSUS commented that the Service may argue that the main concern regarding cholera is with the density of snow geese and the fast rate of disease transmission that may result. Information provided in Friend (1999) states that attempts to reduce populations of migratory birds that may speed disease transmission can be justified only under special circumstances and conditions, including complete eradication and prevention of dispersal of potentially infected birds. Therefore, increased hunting pressure would not likely decrease cholera transmission among snow geese or other birds and may, in fact, speed up the spread of the disease to new sites.

The information cited in Friend (1999:88–91) deals specifically with *control* of avian cholera outbreaks once they have *already occurred.* We agree that the outbreak control methods recommended by Friend (1999) are valid once an outbreak has occurred. However, the point of discussion is that the reduction of light geese, beyond the immediate need to prevent further habitat destruction, may reduce the likelihood of cholera outbreaks occurring in the first place.

(63) The API commented that the Service has created a National Wildlife Refuge system that forces light geese to concentrate on areas not open to hunting, which exacerbates the spread of disease. If the Service's concern about cholera were not merely another scare tactic designed to ''demonize'' light geese, but was genuine, at the very least the Service should review its own policies that lead to denser concentrations of light geese and other waterfowl.

The mission of the Service's 100-year-old National Wildlife Refuge System goes far beyond management of light goose populations. Nevertheless, our proposed management alternative calls for some refuges to decrease the amount of sanctuary and food available to migrating and wintering light geese. Proposed management practices may also include altering or eliminating water areas that serve as roost sites. Therefore, we have reviewed our management policies that lead to denser concentrations of light geese.

(64) The API commented that the document exhibits a double standard of conservation concern by discussing the loss of a few nests of semi-palmated sandpipers or red-necked phalaropes from a large population, but a greater concern is not expressed for the potential of whooping cranes, which actually are endangered, to be shot.

Our discussion with regard to nest losses of sandpipers and phalaropes was used to illustrate the fact that light goose habitat destruction can affect other bird species utilizing the same area. With regard to whooping cranes, we addressed the potential impact of the light goose management program on cranes by describing how migration behavior of light geese and cranes differed in a way that would not favor illegal take. Furthermore, we described the Aransas-Wood Buffalo Population Whooping Crane Contingency Plan, which provides a specific mechanism for protecting cranes when they enter a situation where they face hazards such as hunting activities, contaminants, or disease situations. The discussion of protection of endangered cranes is totally unrelated to our discussion of the impacts of habitat degradation on other

species. We have not equated the status of sandpipers or phalaropes with that of whooping cranes, and, therefore, we do not believe that we have exhibited a double standard of conservation concern.

(65) The HSUS commented that, considering the relative lack of interest on the part of sportsmen in hunting snow geese, they question the lumping together of all goose hunting expenditures rather than separately examining light goose hunting in the socioeconomic analysis.

We disagree that there is a lack of interest in hunting snow geese. Prior to implementation of special light goose regulations, light goose harvest represented approximately 24% of the total annual goose harvest in the United States. Because light geese are generally considered more difficult to hunt due to their flocking behavior, we believe the fact that they comprise nearly one quarter of the goose harvest indicates there is no lack of interest in pursuing them. Furthermore, we have not lumped together all goose hunting expenditures in our economic analysis. In section 3.5.1 of the EIS we specifically addressed the economic impact of light goose hunting and estimated a total economic impact of approximately $146 million in the United States. We further divided this economic impact of light goose hunting by flyway, based on the percent distribution of harvest among flyways.

(66) The API commented that, while the document acknowledges the far greater nonconsumptive use and economic activity, versus consumptive use, of waterfowl, we disagree with the statement, ''Information on the percentage usage that can be attributed to duck or goose species is not available.'' Such information could have been obtained by ''monitoring birding e-mail lists (such as BirdChat or OntBirds)'' or by collecting information from snow goose festivals held in various locations in the United States and Canada.

Our statement regarding the lack of information on the percent of nonconsumptive usage of duck versus goose species relates directly to the National Survey of Fishing, Hunting and Wildlife-Associated Recreation conducted by the Service and the Bureau of Census, as well as the study conducted by Teisl and Southwick (1995). Neither source broke down economic activity into duck and goose components. These were, and still remain, the only available studies we are aware of that are conducted on a national scope that provide the socioeconomic data we needed to conduct our analysis for the United States. We have included recent results of an economic impact study conducted in Quebec that gave estimates of the economic benefits of birdwatching and goose festivals (see EIS section 3.5.2). Conducting a separate study of the economic impacts of snow goose festivals (if they exist) in the United States is beyond the scope and capability of the EIS, even if a comprehensive listing of such festivals was available.

(67) The HSUS commented that in the Service's proposed rule (FR 66, pp. 52077–52090) there is a discussion of how habitat damage in the Arctic will eventually trigger a density-dependent regulation of the population and cause a decline in the population to a level that is too low to permit any hunting, thus closing light goose hunting seasons. This passage comes from the subsection ''Environmental Consequences of Taking No Action'' despite the fact that the statement regarding hunting seasons is clearly a socioeconomic impact and not an environmental one. The Service also points out that maintaining populations at usable levels will benefit hunters and birdwatchers and will ensure the future of a $146 million industry associated with light goose hunting in the United States. This reveals something about the single-game-species management philosophy that the HSUS can only guess underlies the reasoning behind the management plan.

The EIS Chapter 3 dealing with the Affected Environment includes not only a discussion of light goose populations, other bird species, and habitat, but also the socioeconomic impacts of light goose hunting, nonconsumptive use of light geese, and subsistence uses of light geese. Thus, the ''affected environment'' is not strictly related to birds or habitat. Consequently, it was appropriate to discuss the economic impacts of a population crash in the section of the proposed rule labeled, ''Environmental Consequences of Taking No Action''. This is analogous to the analysis of socioeconomic impacts of the No Action alternative (EIS section 4.6.1) in Chapter 4—Environmental Consequences. We clearly state that prevention of a population crash will benefit both hunters and birdwatchers. We cited the potential loss of $146 million associated with light goose hunting only because a similar cost estimate is not available for losses associated with nonconsumptive uses in the United States. However, in section 4.6.1 we point out that such losses will be lower than those associated with consumptive uses because birdwatching and related activities can continue at lower goose population levels, whereas goose hunting may be closed completely at the same low population level. Given the available data, we believe our analysis of impacts was balanced, and does not represent a single-game-species management philosophy.

(68) The HSUS commented that evidence cited by the Arctic Goose Habitat Working Group indicates that density-dependent processes are already affecting goose reproduction and survival and should eventually result in a population decline. For example, reduced food availability has been linked with decreases in clutch size, gosling size, and adult body mass in lesser snow geese. These proximate physiological effects on individuals are reflected in population decreases. Instead of allowing normal density-dependent processes to regulate goose populations, the Service proposes to increase hunting mortality, which will likely have only a short-term effect on light goose populations.

We reviewed light goose responses to habitat degradation in section 3.1.9. The number of geese nesting at traditional colony sites at La Perouse Bay has declined; however, the number of geese in the overall population nesting at La Perouse Bay and surrounding Cape Churchill area has increased (Cooch *et al.* 2001). This is explained by the fact that older female snow geese tend to return to their natal colony areas, which have been degraded, and have lower reproductive output. Younger females have recently tended to nest outside the traditional areas at La Perouse Bay and may be using more distant brood-rearing sites (Rockwell *et al.* 1993, Cooch *et al.* 2001). Individuals that disperse to new areas experience higher reproductive success (Cooch *et al.* 2001), and thus ''cheat'' density-dependent regulation of the population (Abraham and Jefferies 1997). The ability of the light goose population to partially escape density-dependence means that habitat degradation will continue as the population increases. As stated in our previous response, we believe that population reduction may eventually occur. However, we believe that the amount of habitat destruction that will occur in the interim must be avoided.

(69) The HSUS commented that density-dependent effects on greater snow geese appear to have begun via decreases in gosling mass, size, and condition, apparently due to decreases in food availability during summer. It is clear that growth rates vary with annual variation in food availability, which may be affected in part by density-

independent factors such as variation in the onset of spring.

We reviewed the studies by Reed and Plante (1997) and Giroux *et al.* (1998) as they relate to variation in gosling growth rates. The study conducted by Reed and Plante (1997) indicated long-term declines in gosling mass, size, and condition. They attributed this decline to decreased food availability on the breeding grounds. However, declines in reproduction were not documented, likely due to agricultural subsidies on migration and wintering grounds, and the population continued to increase up until implementation of a conservation harvest in Quebec. Although the carrying capacity of breeding habitats such as Bylot Island has not been exceeded as of yet (Masse *et al.* 2001), the agricultural subsidy available to geese makes it possible that they will exceed the carrying capacity and cause habitat damage similar to that caused by lesser snow geese in the eastern and central Arctic. Density-independent effects on the population, such as timing of snowmelt in spring, will continue to impact goose populations, regardless of population size. Therefore, we do not believe that mention of these factors is germane to the overabundance issue.

(70) Both the HSUS and API commented that the Service has misrepresented the conclusions of Thomas and MacKay (1998) when it attributes to these authors the suggestion that ''isostatic uplift, not the feeding actions of geese, is responsible for habitat damage at breeding colony sites.''

The reference to Thomas and MacKay (1998) with regard to isostatic uplift and vegetation damage has been removed.

(71) The HSUS and API objected to our use of results from studies conducted by Gratto-Trevor (1994) and Rockwell *et al.* (1997b) to suggest that light geese are impacting other bird species. The commentors questioned the validity of the methodology used by Rockwell *et al.*, and used statements by Gratto-Trevor concerning the variety of factors that affect shorebird census to argue against using such studies. Furthermore, they argued that none of the species mentioned in these studies are threatened, endangered, or declining globally.

The fact that none of the species cited in the above studies are threatened, endangered, or declining locally is not germane to the issue of whether habitat degradation caused by light geese can impact other species. In our DEIS we specifically stated that results from these studies indicate local declines in areas damaged by light geese, and that the results were not presented to suggest continental declines of a particular species. Gratto-Trevor discussed several factors that affect shorebird censuses in the arctic, including breeding site fidelity. Buff-breasted sandpipers and Pectoral sandpipers were cited as species that do not exhibit site fidelity. However, Gratto-Trevor presented census results indicating declines in semi-palmated sandpipers and red-necked phalaropes, which were not included in her list of species that do not exhibit site fidelity. Therefore, we can only assume that these two species do indeed show site fidelity and that censuses repeated annually would be adequate to document declines. Gratto-Trevor stated that semi-palmated sandpipers and red-necked phalaropes in her study were individually recognizable (via unique color-band combinations) which, when combined with intensive nest searches, made it ''possible to obtain an accurate estimate of the local breeding populations.'' Environmental factors such as weather and food availability were cited as factors that appeared to be related to the decrease in semi-palmated sandpipers, but foraging by snow geese ''in the ever increasing local colony'' was also cited as potentially having an impact on habitat quality for shorebirds. We believe that habitat destruction by the ''ever increasing'' goose colony in the 16 years between censuses conducted in 1983 and 1999 undoubtedly played a major role in the decline of these shorebird species in the area.

The study by Rockwell *et al.* (1997b) was criticized by the commentor as being conducted on only one site and, therefore, the results may not be applicable to birds in other regions. Furthermore, the data were criticized as apparently not being collected by way of a systematic census, but ''almost as an afterthought during the course of other research.'' In the description of study methods, Rockwell *et al.* (1997b:2–3) indicated that analyses were restricted to a time period when there was always a large number of individual observers in the field each day and that individuals were assigned specific, relatively small, study areas in which they spent the day collecting data on snow geese, vegetation in the marsh, and bird species encountered. Furthermore, Rockwell stated that in some years *systematic data* were also collected for semi-palmated sandpipers and red-necked phalaropes (among other species); which happen to be the 2 species for which we presented data in section 3.3.2 of the EIS. Therefore, we believe Rockwell's study, as well as Gratto-Trevor's, are valid sources of information on the impacts of light geese on other species. In the Final EIS we have added results from the recent study by Sherfy and Kirkpatrick (2003) that indicated that snow geese may negatively influence the availability of invertebrates for other waterbirds in some managed wetland impoundments in the mid-Atlantic region.

(72) The API commented that the EIS discussion of greater snow geese traditionally staging during October almost exclusively on the St. Lawrence within a relatively small area of bulrush marshes before leaving appears to come only from anecdotal sources, which apparently are acceptable to the Service under certain circumstances. It is not clear from the text how a non-stop flight from Ungava in late August led to birds staging during October almost exclusively on the St. Lawrence. After four weeks of nonstop flying, they made it to the St. Lawrence. How slowly did they fly?

We cited Reed *et al.* (1998) as the source of the discussion of greater snow goose use of bulrush marshes on the St. Lawrence. The observations of goose habitat use come from aerial surveys conducted on the staging areas since the mid-1950s (Reed *et al.* 1998). Reed *et al.* also cite the studies conducted by Heyland (1972), Bourget 1974, and Gauvin and Reed (1987) in this discussion. Therefore, we believe that use of such information is more reliable than relying on anecdotal information. The comment with regard to our description of the migration from Ungava to the St. Lawrence apparently has been made as a result of misinterpretation of the document text. We did not state that the migration was completed by flying nonstop for 4 weeks. We stated that birds leave breeding areas in mid-August and then make an initial flight to the Ungava Peninsula. Geese stage there for several days before they undertake another long migration to the St. Lawrence. We made no mention of the length of time required for this second leg of migration. Mention of the month of October was not connected with the description of migration, and was made only with regard to changes in habitat use by geese that use the St. Lawrence staging area.

(73) The API commented that the Document speculates (top of page 56) that, ''although marshes that have experienced 'eat outs' may recover 'relatively quickly * * * areas that are grazed by geese year after year may be maintained as mudflats.' This is a non-sequitor, as a pure mudflat, devoid of plant biomass at or below ground level, obviously cannot be 'grazed by geese

year after year' or for even one year. Geese don't graze on mud in the absence of vegetation, and such mud would not sustain geese. If the mudflat is not devoid of vegetation above, at, or below surface level then obviously there is reason to believe that it is a viable zone for feeding by mudflat-dependent species such as the Red Knot.'' As the Red Knot is in decline it would be helpful to know if it, or any of many other shorebird species, would benefit from maintenance of mudflats along the U.S. Atlantic coast. The API stated, ''that is the kind of 'assessment' we were hoping for and believe the American people deserve.''

We do not believe that reference to recovery of eat-outs and maintenance of mudflats on mid-Atlantic marshes was speculation on our part. In the DEIS discussion (page 56) we were citing results of studies by Giroux *et al.* (1998), Widjeskog (1977), Smith and Odum (1981), and Young (1985). The comment fails to mention our citation of these studies. Young (1985) used the term ''graze'' in describing all modes of feeding by snow geese. For example, Young stated that geese have been reported to ''graze'' to a soil depth of approximately 25 cm. Mudflat conditions appear after an eat-out, but that does not mean that all belowground plant biomass has been removed by geese. Therefore, a mudflat condition does not require, as the commentor states, complete removal of vegetation below surface level. Marsh vegetation can re-establish if belowground biomass is available (Smith and Odum 1981); and, therefore, geese can graze in a marsh year after year even if mudflat conditions appear during a portion of the year. However, if geese continue to remove belowground biomass year after year from a particular marsh, there may be insufficient ''reserve biomass'' available to provide for re-growth (Smith and Odum 1981). A comprehensive review of the importance of mudflat maintenance to shorebirds along the U.S. Atlantic coast is beyond the scope of this document.

(74) The HSUS commented that populations of lesser snow geese and Ross' geese in the western Arctic are given short shrift in the DEIS, probably because of the lack of evidence of ''damage'' to vegetation on the breeding grounds in that region. In addition, the Service expresses concern over the dangerously low reproductive output and small population of Wrangel Island lesser snow geese. Wrangel Island birds migrate and winter in areas that overlap with those from birds of the western and central Arctic. However, the concern for Wrangel Island birds does not stop the Service from including the option of implementing special regulations in the Pacific Flyway if damage to western Arctic habitats becomes evident. If the known impacts of western Arctic light geese on breeding grounds is accurate, then there is no scientific basis for including the Pacific Flyway in the preferred alternative. A separate EIS for the Pacific Flyway should be conducted prior to any actions being taken there.

In response to this comment, we have included additional information on the status of western Arctic light geese in the Final EIS. Because this EIS is a comprehensive treatment of light goose management, we do not believe it would be appropriate to omit the Pacific Flyway from our analysis. We clearly state in the preferred alternative that the Pacific Flyway will be eligible to implement special light goose regulations only if damage to breeding habitats in the western Arctic becomes evident. At this time, we are not recommending that the Pacific Flyway should implement such regulations. However, we point out that the number of light geese in the western Arctic is increasing, and biologists have already broached the subject of the need to monitor the situation and possibly take actions to stabilize the number of birds in the western Arctic before they escape control via normal harvest and become overabundant (Hines *et al.* 1999, Canadian Wildlife Service Waterfowl Committee 2000). In the analysis of our preferred alternative we clearly stipulate that any regulations implemented in the Pacific Flyway to reduce western Arctic birds should be designed to avoid increased harvest of Wrangel Islands birds. Inclusion of the Pacific Flyway in the current EIS does not preclude us from conducting additional NEPA analyses in the future, if we decide to implement regulations in the Pacific Flyway.

(75) The API commented that there appears to be a self-perpetuating juggernaut driving a fear of ''light'' goose population size. API stated that they met a student who was working hard to prove how much ''damage'' was being done by Ross's geese, because that is what her professor wanted, and not simply allowing her research to lead her where it would, without a political goal in sight. API is concerned about ''behind-the-back pressures taken against informed individuals who have dared to question the Service's position on 'light' geese.'' API gave an account of their discussion with an ornithologist who has spent many summers in the arctic and is convinced there is no light goose problem, but has asked not to be quoted by name because much of his funding comes from Ducks Unlimited. API reported that they have been told off the record by ''some CWS biologists that essentially the need to lethally cull light geese is driven by DU's agenda,'' and that there is little to distinguish DU's need to encourage waterfowl hunting, its connections to hunting to support industry, and its need to be seen as an active participant in ''conservation''—from the supportive agenda of many waterfowl management staff of the Service.

Mention of unsubstantiated hearsay of real, imagined, or implied pressure to suppress views of scientists, biologists, ornithologists, or anyone else that does not support the Service's management philosophy is unfortunate. Our light goose management program is driven by our responsibility to conserve light geese, light goose habitat, and habitats important to other wildlife species. Dedicated Service staff work in the public's trust to conserve a valuable wildlife resource.

(76) The Pennsylvania Farm Bureau commented that increasing numbers of their membership are reporting damage to crops and property by snow geese. The Bureau supports proactive steps to reduce population levels of snow geese and associated agricultural damage. They further support a depredation program for snow geese on farms suffering damage from geese.

We believe that a reduction of the greater snow goose population will help to alleviate damage to agricultural crops in Pennsylvania and other Atlantic Flyway States. We issue depredation orders to permit the killing of migratory game birds that ''* * * have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests * * *'' (50 CFR 21.42). Light goose damage to natural marsh and tundra habitats is not covered by depredation order regulations. However, light geese also cause damage to crops such as hay and cereal grains. In such cases, farmers would be eligible to apply for a depredation permit (50 CFR 21.41).

(77) The National Rifle Association (NRA) supported changes in regulations that would increase the harvest of light geese. With regard to changes in refuge habitat management, they suggested that natural food habitats may be severely impacted if agricultural crops are removed from refuges. They urged retention of some agricultural areas in certain situations to serve as buffers for natural habitats against light goose foraging.

Each refuge will make changes to their agricultural crop programs that are

compatible with their biological program.

(78) The Policy Council of the American Bird Conservancy, Wildlife Management Institute, Ducks Unlimited, Inc., U.S. Sportsmen's Alliance, New Jersey Waterfowl Association, and the United Kennel Club supported Alternative B for reducing light goose populations. Several of these groups also urged close monitoring of the goose populations and habitat to determine when the threat to habitats has ended and control activities were no longer needed.

Thank you for your comment.

Changes From the Proposed Rule

Several comments we received on the Draft EIS addressed the issue of the timetable when certain management actions would occur. In our responses contained in the FEIS, we stressed that timetables with regard to habitat restoration are difficult to quantify due to the prolonged recovery period we expect to occur, which may take decades or more. However, it became evident that the proposed rule was not explicit with regard to the population levels at which management actions would be taken. Accordingly, in the final rule we have added language to § 21.60 that specifies:

- The population levels at which management actions will occur in each flyway (paragraph (d)),
- The mechanism by which we will announce such actions (paragraph (e)), and
- The mechanism by which we will terminate population control activities (paragraph (h)).

The proposed rule outlined the conditions under which the conservation order would be suspended, and we have retained that language in the final rule (§ 21.60(i)).

In the proposed rule we restricted the scope of initial implementation of new light goose regulations to the Atlantic, Mississippi, and Central Flyways. However, we also indicated that the Pacific Flyway would be eligible to implement special light goose regulations in the future if controlling light goose populations that migrate to that flyway becomes necessary. By creating new paragraph (d) in § 21.60 as discussed above, it became necessary for us to further amend § 21.60 to include:

- A description of the Pacific Flyway States (paragraph (c)(3)), and
- The conditions under which the Pacific Flyway would be eligible for future implementation (paragraph (d)(3)).

Special Light Goose Regulations

This rule makes permanent regulations that are very similar to those in effect by reason of the Arctic Tundra Habitat Emergency Conservation Act. The differences are that we now would include the Atlantic Flyway States as being eligible to implement special light goose regulations to manage the population of greater snow geese. In addition, Pacific Flyway States will be eligible in the future if habitat damage becomes evident on goose breeding areas in the western Arctic. We also have provided further guidance to States as to what type of information should be collected and reported with regard to harvest resulting from implementation of the conservation order. Such information will further refine our ability to evaluate the impacts of such regulations on light goose populations. Finally, we have revised terminology with regard to baiting that incorporates changes we made to baiting regulations on June 3, 1999 (64 FR 29799).

These regulations address two areas. The first authorizes the use of new hunting methods (*i.e.*, electronic calls and unplugged shotguns) to harvest light geese during normal hunting season frameworks. New methods of take are allowed during a light-goose-only hunting season when all other waterfowl and crane hunting seasons, excluding falconry, are closed. Authorization of new methods of take during light-goose-only seasons are allowed only during normal hunting season framework dates (September 1 to March 10), except as provided in 50 CFR part 21 described below. Individual States are authorized to determine the exact dates. Persons utilizing new methods of take during light goose hunting seasons are required to possess a Federal migratory bird hunting stamp, to be registered under the Harvest Information Program, and to be in compliance with any additional State license and stamp requirements pertaining to hunting waterfowl.

The second revises subpart E of 50 CFR part 21 for the management of overabundant light goose populations. Under this subpart, we establish a conservation order specifically for the control and management of light geese. Under the authority of this rule, States could initiate aggressive harvest management strategies with the intent to increase light goose harvest without having to obtain an individual permit, which will significantly reduce the administrative burden on State and Federal governments. This rule enables States, as a management tool, to use hunters to harvest light geese, by shooting in a hunting manner, inside or outside of the regular migratory bird hunting season framework dates of September 1 and March 10. Although a conservation order could be implemented at any time, we believe the greatest value of this rule is the provision of a mechanism to increase harvest of light geese beyond March 10, the latest possible closing date for traditional migratory bird hunting seasons. This provision would be especially effective in increasing harvest in mid-latitude and northern States during spring migration. The conservation order is not a hunting season, and implementation of such regulations should not be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

Conditions under the conservation order require that participating States inform participants acting under the authority of the conservation order of the conditions that apply to the amendment. In order to minimize or avoid take of nontarget species, States may implement this action only when all waterfowl (including light goose) and crane hunting seasons, excluding falconry, are closed. In addition to authorizing new methods of take (*i.e.*, electronic calls and unplugged shotguns), the conservation order does not impose daily bag limits for light geese and allows shooting hours for light geese to end one-half hour after sunset. Because it is not a hunting season, conservation order participants are not required by Federal law to possess a valid migratory bird hunting stamp or required to be registered in the Harvest Information Program, unless otherwise required by an individual State. States may impose additional requirements on participants.

We will annually monitor the status of light goose populations in North America. We will publish a notice in the **Federal Register** whenever States in a particular Flyway are eligible to implement special light goose regulations for the purposes of population reduction. Similarly, we will publish a notice in the **Federal Register** to suspend such regulations in a particular Flyway when population goals are met for light goose populations that utilize the Flyway. However, in the event that any light goose population resumes population growth above management goals, it may become necessary to re-implement additional methods of take (Part 20) and/or the conservation order (Part 21) in an attempt to return the population to the desired level.

Notice

Upon the effective date of this final rule, we hereby provide notice per 50 CFR 21.60(e) that the Atlantic, Mississippi, and Central Flyways are eligible to implement the special light goose regulations contained in Parts 20 and 21. A separate Notice relating to the authorization of regulations for managing harvest of light goose populations is published elsewhere in this issue of the **Federal Register**.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a DEIS on October 5, 2001 (66 FR 51274). This followed a September 28, 2001, Environmental Protection Agency notice of availability of our DEIS (66 FR 49668). In addition, on October 12, 2001 (66 FR 52077), we published a proposed rule to establish regulations to implement the DEIS proposed action, Alternative B. On July 13, 2007 (72 FR 38577) and July 18, 2007 (72 FR 39439), notices of availability of our FEIS were published, followed by a 30-day public review period. The Environmental Protection Agency (EPA) reviewed the Final EIS (FEIS) and stated that they did not identify any environmental concerns with our preferred alternative, and that the document provided adequate documentation of the potential environmental impacts. The EPA assigned a rating of Lack of Objection to the FEIS. The FEIS is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' We completed Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

Many small businesses within the retail trade industry (such as hotels, gas stations, sporting good stores, *etc.*) may benefit from this rule. The economic impacts of this rulemaking will fall primarily on small businesses because of the structure of the industries related to waterfowl hunting. The rule benefits small businesses by avoiding failure of an ecosystem that produces migratory bird resources important to American citizens.

Closure of light goose hunting in a particular flyway would influence trip-related expenses rather than equipment purchases that could be used to hunt other waterfowl species. Thus, this analysis focuses on trip-related expenditures associated with light goose hunting. Hunting seasons for all goose species resulted in trip-related expenditures of $207.4 million in 2006 (U.S. Department of the Interior 2007). Light geese represent approximately 24% of all geese taken in the United States, thus accounting for an annual economic impact of $49.8 million.

By having ripple effects throughout the economy, these direct expenditures are only part of the impact of goose hunting. Using a national impact multiplier for waterfowl hunting (2.49) derived from the report ''Economic Impact of Waterfowl Hunting in the United States'' yields a total economic impact of approximately $123.9 million (2006 dollars) (U.S. Department of the Interior 2005). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.) The distribution of light goose harvest among flyways is as follows: Atlantic Flyway 5%; Mississippi Flyway 35%; Central Flyway 50%; Pacific Flyway 10%. Allocating the economic impact of light goose hunting in expenditures in each Flyway by these proportions, the economic impact of light goose hunting is $6.2 million in the Atlantic Flyway, $43.7 million in the Mississippi Flyway, $61.6 million in the Central Flyway, and $12.4 million in the Pacific Flyway.

The rule is expected to preserve this economic impact and generate additional output by providing opportunity to increase take of light geese beyond March 10 in the three easternmost flyways. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. In 1999, we estimated that implementation of new light goose regulations would avert a population crash, thus avoiding the closure of normal light goose hunting seasons due to low populations in the Central and Mississippi Flyways, and avoiding a $105.3 million loss in economic output associated with such seasons. Implementation of light goose regulations would also help reduce agricultural losses caused by geese. Our intent is to implement special regulations to increase harvest of light geese and reduce populations to levels that habitats can support and also to reduce agricultural damages.

We expect that the incremental increases in economic impact will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities. It is unlikely that a substantial number of small entities will have more than a small benefit from the increased spending due to a longer light goose hunting season. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Thus, we have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

The Office of Management and Budget has determined that this rule is not significant and has reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on

the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This final rule contains information collections for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We 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. OMB has approved the information collection requirements associated with this rule and assigned OMB Control Number 1018–0103.

We expect a maximum of 39 states to participate under the authority of the conservation order each year it is available. States and tribes must keep records of activities carried out under the authority of the conservation order. This includes the number of mid-continent light geese taken under the regulation, the methods by which they are taken (*e.g.*, unplugged shotgun, electronic call), and the dates they were taken. We believe that this recordkeeping requirement is necessary to ensure that those individuals carrying out control activities are authorized to do so. The States must submit an annual report summarizing the activities conducted under the conservation order. Reported information helps us to assess the effectiveness of light geese population control methods and strategies and assess whether or not additional population control methods are needed.

We estimate the annual burden associated with this information collection to be 74 hours. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the reports.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Designation of Participants—50 CFR 21.60f(6)	39	39	7.4	288.6
Inform Participants of Requirements—50 CFR 21.60f(7)	39	39	7.4	288.6
Recordkeeping—50 CFR 21.60f(8)	39	39	44.4	1,731.6
Reporting—50 CFR 21.60f(9)	39	39	14.8	577.2
Total	39	39	74.0	2,886.0

During the proposed rule stage, we solicited comments for a period of 60 days. While we did not receive any comments specifically addressing the information collection requirements, we did receive several comments pertaining to other aspects of the rule, which we summarize and discuss in this preamble. We did not make any changes to our burden estimates as a result of these comments.

At any time, interested members of the public and affected agencies may comment on the information collection requirements contained in this rule. Please send such comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

We particularly invite your comments on: (1) Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection; (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 applicants.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not ''significantly or uniquely'' affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

In promulgating this rule, we have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical

invasion of property, or the regulatory taking of any property. In fact, the rule would allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes. Specifically, we sent Tribes copies of our May 13, 1999, Notice of Intent (64 FR 26268) that outlined the proposed action in the Draft Environmental Impact Statement on Light Goose Management. In addition, we sent Tribes our August 30, 1999, Notice of Meetings (64 FR 47332), which provided the public additional opportunity to comment on the DEIS process. Finally, Tribes were sent copies of our DEIS for their review and input.

Energy Effects—E.O. 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Record of Decision

The Record of Decision for management of light geese, prepared pursuant to National Environmental Policy Act (NEPA) regulations at 40 CFR 1505.2, is herein published in its entirety.

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of NEPA. The purpose of this ROD is to document the Service's decision for the selection of an alternative for strategies to reduce certain populations of light geese that have become overabundant and are being injurious to various breeding, migration, and wintering habitats. Alternatives have been fully described and evaluated in the June 2007 Final Environmental Impact Statement (FEIS) on light goose management.

This ROD is intended to: (a) State the Service's decision, present the rationale for its selection, and describe its implementation; (b) identify the alternatives considered in reaching the decision; and (c) state whether all means to avoid or minimize environmental harm from implementation of the selected alternative have been adopted (40 CFR 1505.2).

Project Description

Various light goose populations in North America have experienced rapid population growth, and have reached levels such that they are damaging habitats on their Arctic and subarctic breeding areas (Abraham and Jefferies 1997, Alisauskas 1998, Jano *et al.* 1998, Didiuk *et al.* 2001). Habitat degradation in arctic and subarctic areas may be irreversible, and has negatively impacted light goose populations and other bird populations dependent on such habitats (Gratto-Trevor 1994, Rockwell 1999, Rockwell *et al.* 1997). Natural marsh habitats on some migration and wintering areas have been impacted by light geese (Giroux and Bedard 1987, Giroux *et al.* 1998, Widjeskog 1977, Smith and Odum 1981, Young 1985). In addition, goose damage to agricultural crops has become a problem (Bedard and Lapointe 1991, Filion *et al.* 1998, Giroux *et al.* 1998, Delaware Div. of Fish and Wildlife 2000).

There is increasing evidence that lesser snow and Ross's geese act as prominent reservoirs for the bacterium that causes avian cholera (Friend 1999, Samuel *et al.* 1997, Samuel *et al.* 1999a). Over 100 species of waterbirds and raptors are susceptible to avian cholera (Botzler 1991). The threat of avian cholera to endangered and threatened bird species is continually increasing because of increasing numbers of outbreaks and the expanding geographic distribution of the disease (Friend 1999). This threat likely will increase as light goose populations expand (Samuel *et al.* 2001).

The Arctic Goose Habitat Working Group recommended that light goose numbers in the mid-continent region should be reduced by 50% (Arctic Goose Habitat Working Group 1997). The Working Group outlined a strategy that advocated monitoring the number of mid-continent light geese to see that appropriate population reductions are achieved, and to simultaneously monitor habitats in the Arctic coastal ecosystem. They further recommended that when the population size reached a level that is causing no further habitat damage, the management program should be changed to stabilize light goose numbers at that threshold (Rockwell *et al.* 1997:96). In 1998, the Arctic Goose Habitat Working Group recommended a short-term management goal of stabilizing the greater snow goose population at between 800,000 to 1 million birds (Giroux *et al.* 1998). However, a reduction of the population below that level was recommended if natural habitats continue to deteriorate, or if measures taken to reduce crop depredation do not achieve desired results (Giroux *et al.* 1998).

The Canadian Stakeholders Committee in Quebec adopted a population goal of 500,000 birds to address continued habitat degradation and agricultural depredations in the St. Lawrence Valley (Arctic Goose Joint Venture Technical Committee 2001). The population goal of 500,000 birds is in agreement with both the Atlantic Flyway Council goal and North American Waterfowl Management Plan goal for greater snow geese (U.S. Dept. of the Interior *et al.* 1998).

Although the number of light geese breeding in the western Arctic is increasing, the Arctic Goose Habitat Working Group has not identified an immediate management concern for habitat in that region. The number of lesser snow geese in the western Arctic is expected to grow from the current level of approximately 579,000 birds to 1 million by the year 2010. Some researchers have suggested a proactive approach to management of western Arctic lesser snow geese by stabilizing the population at its current level before it escapes control via normal harvest (Hines *et al.* 1999).

Key Issues

Public involvement occurred throughout the EIS and rulemaking process. From 1999 to 2001, we held 17 public meetings over the course of more than 8 months of total public comment. Through public scoping (the first stage

of public comment) and agency discussions, key issues emerged. In the EIS environmental analysis, we analyzed alternatives with regard to their potential impacts on light geese, other wildlife species, natural resources, special status species, socioeconomics, historical resources, and cultural resources. We also considered the alternatives in terms of their ability to fulfill the purpose and objective of the proposed action: to reduce, manage, and control certain light goose populations that have become seriously injurious to various breeding, migration, and wintering habitats in North America.

Alternatives

Since the FEIS is a programmatic document, the alternatives reflect general management strategies to reduce, manage, and control light goose populations. The EIS examined five alternatives:

Alternative A

Under the No Action alternative, light goose populations would be allowed to increase in size. This alternative would continue to manage light geese through existing wildlife management policies and practices, with the exception of temporary light goose regulations implemented under the Arctic Tundra Habitat Emergency Conservation Act. Traditional harvest of light geese will continue during the regular season and will be managed using existing administrative procedures. Light goose hunting regulations adopted by States will be confined to Federal frameworks that provide for a maximum season length of 107 days, occurring during the period September 1 to March 10 as prescribed by the Treaty (U.S. Fish and Wildlife Service 1988). Existing hunt programs and existing administrative procedures for establishing new hunt programs on national wildlife refuges administered by the Service will remain in place. Habitat management programs on refuges would continue as normal with regard to the purposes for which each refuge was established.

Alternative B

This alternative would modify title 50 Code of Federal Regulations (CFR) part 20 to allow the use of additional hunting methods to hunt light geese within current migratory bird hunting-season frameworks. We would authorize the use of electronic calls and unplugged shotguns to harvest light geese during normal light-goose hunting seasons when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

This alternative would also create a new subpart to 50 CFR part 21 specifically for the management of overabundant light goose populations. Under this new subpart, we would establish a conservation order under the authority of the Migratory Bird Treaty Act with the intent to reduce and stabilize light goose population levels. The conservation order would authorize each State/Tribe in eligible areas to initiate aggressive light goose harvest strategies, within the conditions that we provide, with the intent to reduce the populations. The order will enable States/Tribes to use hunters to harvest light geese, by way of shooting in a hunting manner, during a period when all waterfowl (including light geese) and crane hunting seasons, excluding falconry, are closed, inside or outside the migratory bird hunting season frameworks. The order would also authorize the use of electronic calls and unplugged shotguns, eliminate daily bag limits on light geese, and allow shooting hours to continue until one-half hour after sunset.

The Service will annually monitor and assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. Reduction of light goose populations to management goals will result in numeric levels that still provide abundant opportunities for nonconsumptive uses of the resource (*e.g.*, wildlife viewing). If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved for a particular light goose population, we will initiate action to suspend the conservation order, and/or regular-season regulation changes, for that population. Suspension of regulations for a particular population would be made following a public review process.

Finally, this alternative would alter management practices on some Service national wildlife refuges to decrease the amount of sanctuary and food available to migrating and wintering light geese. The most likely action that a refuge would implement is creating new areas open to light goose hunting, or enlarging areas that currently are open. While some refuges may be opened for migratory bird hunting without area limitation, the National Wildlife Refuge System Administration Act of 1966 stipulates that only 40% of certain refuges may be opened to migratory bird hunting. The Fish and Wildlife Improvement Act of 1978 (Pub. L. 95–616) amended the 1966 Act to permit the opening of greater than 40% of certain refuges to hunting when it is determined to be beneficial to the species hunted. Following Executive Order 12996 issued on March 25, 1996, Congress enacted the National Wildlife Refuge System Improvement Act of 1997, amending the National Wildlife Refuge System Administration Act of 1966 to establish that compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation are the priority public uses of the Refuge System. In order to establish a refuge hunt program, a determination must be made that the program is compatible with the major purposes for which the refuge was established (U.S. Fish and Wildlife Service 1986). Establishment of a hunt program includes preparation of the plan itself, an environmental assessment, consultation in accordance with section 7 of the Endangered Species Act, and proposed and final rules in the **Federal Register** (U.S. Fish and Wildlife Service 1986). Each year, we make new proposals for amendments to refuge-specific hunting regulations available for public review and comment in the **Federal Register**.

Due to the dynamic nature of annual migration and wintering patterns of light geese, as well as changing habitat conditions, we cannot provide a definitive listing of annual management actions that some refuges may implement. Changes to refuge management may also include alteration of habitat programs to reduce food availability for, and make habitats less attractive to, light geese. For example, many refuges have been undertaking reforestation programs. While such programs were not initiated in response to the light goose issue, they will have the added effect of reducing food available to light geese. Some refuges that harbor significant numbers of light geese may choose to alter impoundment water levels in order to create roosting areas and attract birds near hunted sites, or eliminate roosting areas to encourage birds to move to areas where hunting does occur. Reduction of areas planted to agricultural crops on some refuges will also decrease food available to light geese. Modification of prescribed burn programs may also be used to make certain areas on refuges more or less attractive to light geese depending on the size of the burn area. Any uses included with changes in management practices on a particular refuge will be permitted only after they have been determined to be compatible with the purposes for which the refuge was

established and due regard to potential impacts to special status (threatened or endangered) species has been made.

Alternative C

Under this alternative we would implement direct population control to achieve desired light goose population levels. We define direct control as the purposeful removal of large numbers of birds from a population using lethal means. Control efforts would be undertaken by wildlife agencies (Federal and/or State) on light goose migration and wintering areas in the United States. Under this alternative we would create a special light goose permit within 50 CFR part 21 specifically for the reduction of light goose populations. Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are authorized by the Migratory Bird Treaty Act and are promulgated in 50 CFR parts 13 and 21. Federal courts have affirmed that all Federal agencies are subject to prohibitions in the Migratory Bird Treaty Act, including the restrictions on take of migratory birds. Executive Order 13186 states that all Federal agencies are subject to the provisions of the MBTA. Director's Order 131 clarifies Service policy regarding applicability of the MBTA to Federal agencies and the issuance of permits to agencies, including the Service. Any Federal personnel who undertake light goose management activities that will result in take of light geese must apply for and receive a permit from the appropriate Regional Office of the Service to do so. The permit would allow Federal and State agencies involved in migratory bird management, and/or their authorized designated agents, to initiate light goose population reduction actions within the conditions/restrictions of the program. Permits will be issued to the appropriate Regional Director of the Service that oversees the geographic area in question. The permit will delegate authority to Federal personnel and/or cooperating State wildlife agency personnel that will be involved in control activities.

Applications for the special light goose permit would require a statement from the agency that provides a general description of the action area, an estimate of the approximate number of light geese expected to be found in the action area and the approximate number of light geese that are to be taken. Permit holders would be required to properly dispose of or utilize light geese killed under the program. Light geese killed under this permit could be donated for scientific and educational purposes, or be donated to charities for human consumption. In the absence of such disposal options, geese may be buried or incinerated. Light geese, and their plumage, taken under these permits may not be sold, offered for sale, bartered, or shipped for purpose of sale or barter. Control activities would be undertaken such that they do not adversely affect other migratory bird populations or any species designated under the Endangered Species Act as threatened or endangered.

Agencies may use their own discretion for methods of take. Methods may include, but are not limited to, firearms, traps, chemicals or other control techniques that are consistent with accepted wildlife-damage management programs. The advantage of live-trapping is that nontarget species would be released unharmed. Chemical control would be achieved by treating corn or other food with chemicals (*e.g.*, DRC–1339, Avitrol, or alpha chloralose) and broadcasting the treated bait in areas where light geese are feeding. Currently, these chemicals are not registered for use on light geese. Under this alternative, agencies would apply to the Environmental Protection Agency for use of these chemicals on light geese under a Section 18 Specific Exemption, or a Section 24C registration, under the Federal Insecticide, Fungicide, and Rodenticide Act. All chemical control efforts would take place only in areas used by large flocks of light geese. This approach will increase efficiency of the control effort and minimize the take of nontarget species, which tend to avoid sites used by large flocks of light geese (J. Cummings, U.S. Dept. Agriculture, personal communication).

Due to the dynamic nature of annual migration and wintering patterns of light geese, we cannot provide a definitive listing of sites where geese would be taken. However, examination of recent patterns in snow and Ross's goose harvest by county provides a general overview of where goose concentrations, and thus control efforts, would likely occur in the future (U.S. Fish and Wildlife Service 2007). By necessity, control efforts will have to be opportunistic with regard to daily and seasonal movements of geese. Sites likely would include agricultural fields and roosting areas near wetlands, preferably on Federal or State wildlife areas where access would not be an issue. Control activities would be undertaken such that they do not adversely affect other migratory bird populations or any species designated under the Endangered Species Act as threatened or endangered.

Permit holders will be required to keep records of all activities performed under the permit and submit annual reports to the Service office that granted the permit. We will annually review such reports and assess the overall impact of this program to ensure compatibility with the long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved for a particular light goose population, we will initiate action to suspend the special permits for that population.

Alternative D

This alternative would achieve light goose population reduction through direct control on the breeding grounds in Canada. We do not have the authority to unilaterally implement direct population control measures in Canada. However, we have discussed the issue of direct population control with the Canadian Wildlife Service during meetings of the Arctic Goose Joint Venture. The Joint Venture has formed a working group to outline potential methods of direct control if such measures are ever deemed necessary. The working group report by Alisauskas and Malecki (2003) outlined costs of conducting direct control on the breeding grounds. This alternative may or may not involve U.S. wildlife agency participation, depending on the availability of funding and manpower in Canada. Regardless, the Canadian Government would be the lead authority under this alternative.

Methods of control would include shooting, trapping, or chemical control. Shooting of birds by sharpshooters would most likely be conducted during the nest incubation period when birds are attentive to nests, and their movements are limited. Personnel would be flown into nesting colonies and would conduct control efforts during the short nest incubation period. Sharpshooters would easily be able to identify bird species before shooting, and thus avoid take of nontarget bird species. Capture methods would be employed during the brood-rearing period when young birds have not yet attained flight stage and adult birds are undergoing feather molt. In most instances, capturing of birds would be accomplished by driving birds into capture pens with the aid of helicopters. Birds would be euthanized after being captured. Any nontarget bird species caught incidental to light goose trapping would be released. The agency costs of implementing this alternative depend on the distance of the specific breeding

colony to the nearest human settlement, the timing of when direct control would occur (nest incubation period or post-hatch), and the fate of birds that are killed (unretrieved or retrieved for processing).

Chemical control may also be employed during the flightless period when treated baits could be broadcast on sites used by large flocks of birds. Chemical types and methods of application would be similar to those outlined in Alternative C. The cost of conducting fieldwork in the Arctic under this alternative is much higher than control efforts in the United States. To reduce costs, leaving goose carcasses in the field would be an option for consideration. Although we would consider this a waste of the goose resource, the nutrients contained in goose carcasses would be returned to the environment. Alternatively, carcasses could be collected and air-lifted to the nearest available facility for processing.

Alternative E

This alternative would achieve light goose population control using an integrated, two-phased approach involving increased harvest resulting from new regulatory tools (*e.g.*, conservation order), changes in refuge management, and direct agency control. Phase one of this alternative is identical to Alternative B, whereas phase two includes elements of Alternatives C and D. In phase one, we would modify title 50 CFR part 20 to allow the use of additional hunting methods to hunt light geese within current migratory bird hunting-season frameworks. We would authorize the use of electronic calls and unplugged shotguns to harvest light geese during normal light-goose hunting seasons when all other waterfowl and crane hunting seasons, excluding falconry, are closed. In addition, we would create a new subpart to 50 CFR part 21 specifically for the management of overabundant light goose populations. Under this new subpart, we would establish a conservation order under the authority of the Migratory Bird Treaty Act with the intent to reduce and stabilize light goose population levels.

During phase one, we would also alter management practices on some Service national wildlife refuges to decrease the amount of sanctuary and food available to migrating and wintering light geese. The most likely action that a refuge would implement is creating new areas open to light goose hunting, or enlarging areas that currently are open. Changes to refuge management may also include alteration of habitat programs to reduce food availability for, and make habitats less attractive to, light geese.

Although annual monitoring of our program will be conducted, we envision that no more than 5 years would elapse in phase one before we evaluate the effectiveness of the light goose management program and assess the potential need for proceeding to phase two. Phase two of this alternative incorporates direct agency control of light goose populations as described previously in Alternatives C and D. Direct population control would be implemented for a particular population after we determined that reduction of the population cannot be achieved solely through implementation of regulations, such as a conservation order, and changes in refuge management. Management actions initiated during phase one would be continued in order to complement population reductions achieved in phase two.

Because we have no jurisdiction over management actions in Canada (Alternative D), we would begin phase two with the actions outlined in Alternative C. If additional population control actions are required to achieve management goals, we would approach the Canadian Wildlife Service and urge implementation of actions outlined in Alternative D. Initial direct control efforts would be undertaken by wildlife agencies (Federal and/or State) on light goose migration and wintering areas in the United States. Under this alternative we would create a special light goose permit within 50 CFR part 21 specifically for the reduction of light goose populations. Permits will be issued to the appropriate Regional Director of the Service who oversees the geographic area in question. The permit will delegate authority to personnel of the Service, other Federal personnel, and/or cooperating State wildlife agency personnel, to initiate light goose population reduction actions within the conditions/restrictions of the program. Control activities would be undertaken such that they do not adversely affect other migratory birds or any species designated under the Endangered Species Act as threatened or endangered. If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved for a particular light goose population, we will initiate action to suspend the special permits for that population.

Agencies may use their own discretion for methods of take. Methods may include, but are not limited to, firearms, traps, chemicals, or other control techniques that are consistent with accepted wildlife-damage management programs. The advantage of live-trapping is that nontarget species would be released unharmed. Chemical control would be achieved by treating corn or other food with chemicals (*e.g.*, DRC–1339, Avitrol, or alpha chloralose) and broadcasting the treated bait in areas where light geese are feeding. Currently, these chemicals are not registered for use on light geese. Under this alternative, agencies would apply to the Environmental Protection Agency for use of these chemicals on light geese under a Section 18 Specific Exemption, or a Section 24C registration, under the Federal Insecticide, Fungicide, and Rodenticide Act. All chemical control efforts would take place only in areas used by large flocks of light geese. This will increase efficiency of the control effort and minimize the take of nontarget species, which tend to avoid sites used by large flocks of light geese (J. Cummings, U.S. Dept. Agriculture, personal communication).

If the combination of phases one and two of this alternative implemented in the United States is not successful in achieving desired population reduction goals, further management actions in Canada will be needed. These actions are identical to those outlined in Alternative D. Methods of control would include shooting, chemicals, or capturing. Shooting of birds by sharpshooters would most likely be conducted during the nest incubation period when birds are attentive to nests, and their movements are limited. Personnel would be flown into nesting colonies and would conduct control efforts during the short nest incubation period. Sharpshooters would easily be able to identify bird species before shooting, and thus avoid take of nontarget bird species. Capture methods would be employed during the birds' flightless period in summer when they are undergoing feather molt. Capturing of birds would be accomplished by driving birds into capture pens with the aid of helicopters or float planes. Birds would be euthanized after being captured. Any nontarget bird species caught incidental to light goose trapping would be released. The agency costs of implementing this alternative depend on the distance of the breeding colony to the nearest human settlement, the timing of when direct control would occur (nest incubation period or post-hatch), and the fate of birds that are killed. Chemical control may also be employed during the flightless period when treated baits could be broadcast on sites used by large flocks of molting birds. Chemical types and methods of

application would be similar to those outlined in Alternative C. Once the desired reduction of a particular light goose population is achieved, management actions can be curtailed. However, to prevent a rebound of the population, certain maintenance-level actions should remain in place. For example, retention of the use of additional hunting methods (electronic calls, unplugged shotguns) to hunt light geese within current migratory bird hunting-season frameworks would maintain harvest pressure. Temporary reinstatement of a conservation order may be needed in some years to achieve the level of harvest necessary to maintain a population at the desired level.

Decision

The Service's decision is to implement the preferred alternative, Alternative B, as it is presented in the final rule. This decision is based on a thorough review of the alternatives and their environmental consequences.

Rationale for Decision

As stated in the CEQ regulations, ''the agency's preferred alternative is the alternative which the agency believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors.'' The preferred alternative has been selected for implementation based on consideration of a number of environmental, regulatory, and social factors. Based on our analysis, the preferred alternative would be more effective than the current program; is environmentally sound, cost effective, and flexible enough to meet different management needs around the country; and does not threaten the long-term sustainability of light goose populations or populations of any other natural resource.

Alternative B (Modify harvest regulation options and refuge management) was selected because it is the most cost-efficient method of reducing light goose populations to levels that are more compatible with the ability of their habitat to support them. We did not select the No Action Alternative (Alternative A) because it is clear that continued growth of some light goose populations will foster additional habitat degradation and loss on various breeding, migration, and wintering areas. Furthermore, as light goose populations increase, the potential for outbreaks of avian cholera associated with light geese will also likely increase. Degradation and loss of habitat will not only affect light goose populations, but will also affect other bird populations that rely on the same habitats. Similarly, disease outbreaks associated with overabundant light goose populations has the potential to affect other bird species.

We did not select Alternatives C–E due to the prohibitive agency costs associated with direct population control. Furthermore, we believe the direct population control aspects of these alternatives have the potential to result in waste of the light goose resource.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we hereby amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742a–j.

■ 2. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross's geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (greater and lesser snow geese and Ross's geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

* * * * *

■ 3. Revise § 20.22 to read as follows:

§ 20.22 Closed seasons.

No person shall take migratory game birds during the closed season except as provided in part 21 of this chapter.

■ 4. Revise § 20.23 to read as follows:

§ 20.23 Shooting hours.

No person shall take migratory game birds except during the hours open to shooting as prescribed in subpart K of this part and subpart E of part 21 of this chapter.

PART 21—[AMENDED]

■ 5. The authority citation for part 21 continues to read as follows:

Authority: Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

■ 6. Subpart E, consisting of § 21.60, is revised to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation order for light geese.

(a) *What is a conservation order?*

A conservation order is a special management action that is needed to control certain wildlife populations when traditional management programs are unsuccessful in preventing overabundance of the population. We are authorizing a conservation order under the authority of the Migratory Bird Treaty Act to reduce and stabilize various light goose populations. The conservation order allows new methods of taking light geese, allows shooting hours for light geese to end one-half hour after sunset, and imposes no daily bag limits for light geese inside or outside the migratory bird hunting season frameworks as described in this section.

(b) *Which waterfowl species are covered by the order?*

The conservation order addresses management of greater snow (*Chen caerulescens atlantica*), lesser snow (*C. c. caerulescens*), and Ross's (*C. rossii*) geese that breed, migrate, and winter in North America. The term light geese refers collectively to greater and lesser snow geese and Ross's geese.

(c) *Where can the conservation order be authorized?*

The Director can authorize the conservation order in these areas:

(1) The following States that are contained within the boundaries of the Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.

(2) The following States, or portions of States, that are contained within the boundaries of the Mississippi and Central Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri,

Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(3) The following States, or portions of States, that are contained within the boundaries of the Pacific Flyway: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(4) Tribal lands within the geographic boundaries in paragraphs (c)(1), (2), and (3) of this section.

(d) *When will the Director authorize the conservation order in a particular Flyway?*

(1) The Director may authorize the conservation order for the reduction of greater snow geese for any State or Tribe contained within the Atlantic Flyway by publishing a notice under paragraph (e) of this section when the May Waterfowl Population Status report indicates that the management goal of 500,000 birds has been exceeded and that special conservation actions conducted in Canada are insufficient to reduce the population. Authorization of the conservation order in the U.S. portion of the Atlantic Flyway will occur after the Director determines the degree to which the management goal has been exceeded, the trajectory of population growth, anticipated harvest that would result from implementation of the conservation order, and whether or not similar conservation actions will be conducted in Canada.

(2) The Director may authorize the conservation order for the reduction of mid-continent light geese (lesser snow and Ross's geese) for any State or Tribe contained within the Mississippi and Central Flyways by publishing a notice under paragraph (e) of this section when the May Waterfowl Population Status report indicates that the management goal of 1,600,000 birds (winter index for Mid-continent Population and Western Central Flyway Population, combined) has been exceeded. Authorization of the conservation order in the U.S. portion of the Mississippi and Central Flyways will occur after the Director determines the degree to which the management goal has been exceeded, the trajectory of population growth, anticipated harvest that would result from implementation of the conservation order, and whether or not similar conservation actions will be conducted in Canada.

(3) The Director may authorize a conservation order for the reduction of light geese (lesser snow and Ross's geese) for any State or Tribe contained within the Pacific Flyway by publishing a notice under paragraph (e) of this section when the Director determines that light goose numbers in the western Arctic have exceeded the ability of their breeding habitat to support them.

(e) *How will the conservation order be authorized for a particular Flyway?*

The Director will publish a notice in the **Federal Register** when the conservation order is authorized in a particular Flyway.

(f) *What is required for State/Tribal governments to participate in the conservation order?*

When authorized by the Director, any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, light geese under the following conditions:

(1) Activities conducted under the conservation order may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl (including light goose) and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be used only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in the conservation order may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of the conservation order.

(7) States and Tribes must inform participants of the requirements and conditions of the conservation order that apply.

(8) States and Tribes must keep annual records of activities carried out under the authority of the conservation order. Specifically, information must be collected on:

(i) The number of persons participating in the conservation order;

(ii) The number of days people participated in the conservation order;

(iii) The number of persons who pursued light geese with the aid of a shotgun capable of holding more than three shells;

(iv) The number of persons who pursued light geese with the aid of an electronic call;

(v) The number of persons who pursued light geese during the period one-half hour after sunset;

(vi) The total number of light geese shot and retrieved during the conservation order;

(vii) The number of light geese taken with the aid of an electronic call;

(viii) The number of light geese taken with the fourth, fifth, or sixth shotgun shell;

(ix) The number of light geese taken during the period one-half hour after sunset; and

(x) The number of light geese shot but not retrieved.

(9) The States and Tribes must submit an annual report summarizing activities conducted under the conservation order on or before September 15 of each year, to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203. Information from Tribes may be incorporated in State reports.

(g) *What is required for persons to participate in the conservation order?*

Individual participants in State or Tribal programs covered by the conservation order must comply with the following provisions:

(1) Nothing in the conservation order authorizes the take of light geese contrary to any State or Tribal laws or regulations, and none of the privileges granted under the conservation order may be exercised unless persons acting under the authority of the conservation order possess whatever permit or other authorization(s) may be required for such activities by the State or Tribal government concerned.

(2) Persons who take light geese under the conservation order may not sell or offer for sale those birds or their plumage but may possess, transport, and otherwise properly use them.

(3) Persons acting under the authority of the conservation order must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(4) Persons acting under the authority of the conservation order may take light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10

gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

(ii) From or by means, aid, or use of a sinkbox or any other type of low floating device having a depression affording the person a means of concealment beneath the surface of the water.

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may carry out take activities from any stationary motor vehicle or stationary motor-driven land conveyance.

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled bird.

(v) By the use or aid of live birds as decoys. It is a violation of this paragraph (g) for any person to take light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of light geese.

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of light geese.

(vii) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in § 20.11(j–k). Light geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in § 20.11(h) and (l). However, nothing in this paragraph (g) prohibits the taking of light geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, postharvest manipulation or normal soil stabilization practice as described in § 20.11(g), (i), (l), and (m);

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-bronze, tungsten-nickel-iron, tungsten-tin-iron, tungsten-nickel-iron-tin, tungsten-iron-copper-nickel, or other shots that are authorized in § 20.21(j).

(h) *Can the conservation order be suspended?*

The Director reserves the right to suspend or revoke a State's or Tribe's authority under the conservation order if we find that the State or Tribe has not adhered to the terms and conditions specified in this section. The criteria for suspension and revocation are outlined in § 13.27 and § 13.28 of this subchapter. Upon appeal, final decisions to revoke authority will be made by the Director. Additionally, at such time that the Director determines that a specific population of light geese no longer poses a threat to habitats, agricultural crops, or other interests, or is within Flyway management objectives, the Director may choose to terminate part or all of the conservation order.

(i) *Under what conditions would the conservation order be suspended?*

The Director will annually assess the overall impact and effectiveness of the conservation order on each light goose population to ensure compatibility with long-term conservation of this resource. The Director will suspend the conservation order if at any time evidence clearly demonstrates that an individual light goose population no longer presents a serious threat of injury to the area or areas involved. Suspension by the Director will occur by publication of a notice in the **Federal Register**. However, resumption of growth by the light goose population in question may warrant reinstatement of the conservation order to control the population. The Director will publish a notice of such reinstatement in the **Federal Register**. Depending on the status of individual light goose populations, it is possible that a conservation order may be in effect for one or more light goose populations, but not others.

(j) *What are the information collection requirements?*

The information collection requirements associated with the conservation order are described in paragraphs (f)(6) through (9) of this section. Reported information helps us to assess the effectiveness of light geese population control methods and strategies and assess whether or not additional population control methods are needed. The Office of Management and Budget has approved this information collection and assigned OMB Control No. 1018–0103. We 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. At any time, you may submit comments on these information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., (mailstop ARL SQ–222), Washington, DC 20240.

Dated: July 22, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

Editorial Note: This document was received in the Office of the Federal Register on October 29, 2008.

[FR Doc. E8–26171 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2008–N0110; 91200–1231–9BPP–L2]

Migratory Bird Hunting and Permits; Harvest of Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of authorization of regulations managing the harvest of light goose populations.

SUMMARY: This notice advises the public that we authorize States in the Atlantic, Mississippi, and Central Flyways to implement regulations for managing the harvest of light goose populations. The regulations for this harvest are published elsewhere in today's **Federal Register**.

DATES: This notice will go into effect on December 5, 2008.

ADDRESSES: You can obtain a copy of the Final Environmental Impact Statement (FEIS) for the light goose regulations by writing to the Division of Migratory Bird Management, 4401 N. Fairfax Drive, MBSP–4107, Arlington, VA 22203; by e-mailing us at *LightGooseEIS@fws.gov*; or by calling us at (703) 358–1714. The FEIS has been posted on our Web site at *http://www.fws.gov/migratorybirds/issues/snowgse/tblcont.html.*

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, (703) 358–1714; or James Kelley (612) 713–5409.

SUPPLEMENTARY INFORMATION:

Background

Various populations of light geese (greater and lesser snow geese and Ross' geese) have undergone rapid growth during the past 30 years and have become seriously injurious to their habitat, habitat important to other migratory birds, and agricultural interests. Because we believe that several of these populations have exceeded the long-term carrying capacity of their breeding and/or migration habitats and must be reduced, on October 12, 2001, we proposed regulations for the management of light goose populations (66 FR 52077). We published a notice of availability of our final environmental impact statement (FEIS) on light goose management on July 13, 2007 (72 FR 38576). The FEIS describes five alternatives for managing light goose populations and analyzes the direct, indirect, and cumulative impacts related to each alternative. The Record of Decision and final rule associated with the FEIS and this notice are published elsewhere in this issue of the **Federal Register**. In the final rule, we have provided the NEPA and Endangered Species Act considerations pertaining to this notice.

I have made a determination that the population estimate of 1,019,000 greater snow geese (U.S. Fish and Wildlife Service 2007a) has exceeded the Atlantic Flyway Council and North American Waterfowl Management Plan goal of 500,000 birds by 103%; that the population continues to grow at a rate of approximately 8%/year; and that special conservation actions that continue to be conducted in Canada are insufficient to reduce the population. The Service estimates that new regulations for controlling the greater snow goose population will result in a 41% increase in harvest in the U.S. (U.S. Fish and Wildlife Service 2007b). Approximately 32,700 snow geese were harvested in the U.S. portion of the Atlantic Flyway in 2006 (U.S. Fish and Wildlife Service 2007c).

I have also made a determination that the 2007 winter index of 3.09 million midcontinent light geese (lesser snow and Ross's geese, combined) in the Mississippi and Central Flyways has exceeded our management goal of 1.6 million birds by 93% (U.S. Fish and Wildlife Service 2007a). During 1955–1998 the number of midcontinent light geese increased at an annual rate of 3.7%. The number of geese declined at a rate of 2.7% during 1998–2006 when regulations were implemented via the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) to reduce the number of light geese (U.S. Fish and Wildlife Service 2007b). This notice will authorize light goose regulations similar to those authorized by the Arctic Tundra Habitat Emergency Conservation Act in an effort to reduce the midcontinent light goose population to the management goal. During 1999–2005, light goose harvest during the regular season and conservation orders in the U.S. portion of the Mississippi and Central Flyways ranged from 1.1 to 1.5 million birds (U.S. Fish and Wildlife Service 2007c). The Service expects that this range of harvest will be maintained by authorizing light goose regulations through this notice. These regulations will complement special snow goose conservation actions that continue to be conducted in Canada.

Per 50 CFR 21.60(e) of the final rule, we provide notice that we authorize the following States to implement regulations for managing the harvest of light goose populations:

Atlantic flyway states	Mississippi flyway states	Central flyway states
Connecticut	Alabama	Colorado
Delaware	Arkansas	Kansas
Florida	Illinois	Montana
Georgia	Indiana	Nebraska
Maine	Iowa	New Mexico
Maryland	Kentucky	North Dakota
Massachusetts	Louisiana	Oklahoma
New Hampshire	Michigan	South Dakota
New Jersey	Minnesota	Texas
New York	Missouri	Wyoming
North Carolina	Mississippi	
Pennsylvania	Ohio	
Rhode Island	Tennessee	
South Carolina	Wisconsin	
Vermont		
Virginia		
West Virginia		

Literature Cited

U.S. Fish and Wildlife Service. 2007a. Waterfowl population status, 2007. U.S. Department of the Interior, Washington, DC U.S.A.

U.S. Fish and Wildlife Service. 2007b. Final Environmental Impact Statement: Light goose management. U.S. Department of the Interior, Washington, DC U.S.A.

U.S. Fish and Wildlife Service. 2007c. Migratory bird hunting activity and harvest during the 2005 and 2006 hunting seasons: Preliminary estimates. U.S. Department of the Interior, Washington, DC U.S.A.

Dated: July 24, 2008.

Kenneth Stansell,

Acting Director.

Editorial Note: This document was received in the Office of the Federal Register on October 29, 2008.

[FR Doc. E8–26168 Filed 11–4–08; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
November 5, 2008

Part III

The President

Proclamation 8315—National Adoption Month, 2008

Proclamation 8316—National Hospice Month, 2008

Proclamation 8317—Veterans Day, 2008

Executive Order 13477—Settlement of Claims Against Libya

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8315 of October 31, 2008

National Adoption Month, 2008

By the President of the United States of America

A Proclamation

During National Adoption Month, we recognize the compassion of adoptive and foster families as we seek to raise awareness of the need for every child in America to have a safe, loving, and permanent home.

Adopting a child is a great joy and also a great responsibility. Parents are a child's first teachers, and adoptive families can help children learn character and values, the importance of giving back to their community and country, and the courage to realize their potential. On November 15, caring parents across our Nation will celebrate National Adoption Day by finalizing their adoptions and bringing home children in need of a hopeful life.

My Administration is committed to helping young people find the love, stability, and support that a family can provide. We have joined with community and faith-based organizations to raise public awareness of foster children awaiting adoption. With the help of the Congress, we are assisting families in overcoming the financial barriers to adopting children through programs such as the Adoption Incentives Program. In addition, the Collaboration to AdoptUsKids project, which can be found at adoptuskids.org, provides guidance and resources for parents exploring adoption.

During National Adoption Month, we honor adoptive and foster parents who have shown America the depth and kindness of the human heart. Their love and dedication inspire the next generation of Americans to achieve their dreams and demonstrate the true spirit of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2008 as National Adoption Month. I call upon all Americans to observe this month with appropriate programs and activities to honor adoptive families and to participate in efforts to find permanent homes for waiting children.

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

[FR Doc. E8–26522
Filed 11–4–08; 8:45 am]
Billing code 3195–W9–P

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8316 of October 31, 2008

National Hospice Month, 2008

By the President of the United States of America

A Proclamation

During National Hospice Month, we honor the dedicated health care professionals and volunteers who help the terminally ill spend their final days in comfort and with dignity. Hospice care providers and other compassionate individuals are a constant reminder that the greatness of America lies in the hearts and souls of its citizens.

Americans believe that every person has matchless value throughout all of life's stages. Hospice physicians, nurses, counselors, and volunteers put this belief into action by using their talents and energy to care for those who are terminally ill and by providing support and comfort to their loved ones. As an alternative to traditional services, hospice care frequently provides assistance in the home so that patients can be surrounded by family and friends. Hospice counselors offer guidance to patients, as well as to those close to them, as they deal with grief, anxiety, and other end-of-life issues. Through these and countless other acts of compassion, our Nation's hospice caregivers lift up souls, offer peace of mind, and strengthen America's culture of life.

Throughout National Hospice Month, we recognize hospice care professionals and volunteers for their selfless efforts to provide physical, psychological, and spiritual assistance to terminally ill patients and their families.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2008 as National Hospice Month. I encourage all Americans to observe this month with appropriate programs and activities. I also ask Americans to recognize our health care professionals and volunteers for their contributions to helping provide comfort and care to those facing terminal illness.

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

[FR Doc. E8–26524
Filed 11–4–08; 8:45 am]
Billing code 3195–W9–P

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8317 of October 31, 2008

Veterans Day, 2008

By the President of the United States of America

A Proclamation

On Veterans Day, we pay tribute to the service and sacrifice of the men and women who in defense of our freedom have bravely worn the uniform of the United States.

From the fields and forests of war-torn Europe to the jungles of Southeast Asia, from the deserts of Iraq to the mountains of Afghanistan, brave patriots have protected our Nation's ideals, rescued millions from tyranny, and helped spread freedom around the globe. America's veterans answered the call when asked to protect our Nation from some of the most brutal and ruthless tyrants, terrorists, and militaries the world has ever known. They stood tall in the face of grave danger and enabled our Nation to become the greatest force for freedom in human history. Members of the Army, Navy, Air Force, Marines, and Coast Guard have answered a high calling to serve and have helped secure America at every turn.

Our country is forever indebted to our veterans for their quiet courage and exemplary service. We also remember and honor those who laid down their lives in freedom's defense. These brave men and women made the ultimate sacrifice for our benefit. On Veterans Day, we remember these heroes for their valor, their loyalty, and their dedication. Their selfless sacrifices continue to inspire us today as we work to advance peace and extend freedom around the world.

With respect for and in recognition of the contributions our service members have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2008, as Veterans Day and urge all Americans to observe November 9 through November 15, 2008, as National Veterans Awareness Week. I encourage all Americans to recognize the bravery and sacrifice of our veterans through ceremonies and prayers. I call upon Federal, State, and local officials to display the flag of the United States and to support and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with commemorative expressions and programs.

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

[FR Doc. E8–26526
Filed 11–4–08; 8:45 am]
Billing code 3195–W9–P

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13477 of October 31, 2008

Settlement of Claims Against Libya

By the authority vested in me as President by the Constitution and the laws of the United States of America, and pursuant to the August 14, 2008, claims settlement agreement between the United States of America and Libya (Claims Settlement Agreement), and in recognition of the October 31, 2008, certification of the Secretary of State, pursuant to section 5(a)(2) of the Libyan Claims Resolution Act (Public Law 110–301), and in order to continue the process of normalizing relations between the United States and Libya, it is hereby ordered as follows:

Section 1. All claims within the terms of Article I of the Claims Settlement Agreement (Article I) are settled.

(a) Claims of United States nationals within the terms of Article I are espoused by the United States and are settled according to the terms of the Claims Settlement Agreement.

(i) No United States national may assert or maintain any claim within the terms of Article I in any forum, domestic or foreign, except under the procedures provided for by the Secretary of State.

(ii) Any pending suit in any court, domestic or foreign, by United States nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) The Secretary of State shall provide for procedures governing applications by United States nationals with claims within the terms of Article I for compensation for those claims.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a United States national within the terms of Article I pending or filed in any forum, domestic or foreign.

(b) Claims of foreign nationals within the terms of Article I are settled according to the terms of the Claims Settlement Agreement.

(i) No foreign national may assert or maintain any claim coming within the terms of Article I in any court in the United States.

(ii) Any pending suit in any court in the United States by foreign nationals (including any suit with a judgment that is still subject to appeal or other forms of direct judicial review) coming within the terms of Article I shall be terminated.

(iii) Neither the dismissal of the lawsuit, nor anything in this order, shall affect the ability of any foreign national to pursue other available remedies for claims coming within the terms of Article I in foreign courts or through the efforts of foreign governments.

(iv) The Attorney General shall enforce this subsection through all appropriate means, which may include seeking the dismissal, with prejudice, of any claim of a foreign national within the terms of Article I pending or filed in any court in the United States.

Sec. 2. For purposes of this order:

(a) The term ''United States national'' has the same meaning as ''national of the United States'' in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)), but also includes any entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches).

(b) The term ''foreign national'' means any person other than a United States national.

(c) The term ''person'' means any individual or entity, including both natural and juridical persons.

(d) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

Sec. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

THE WHITE HOUSE,
Washington, October 31, 2008.

[FR Doc. E8–26531
Filed 11–4–08; 8:45 am]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (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. 6197/P.L. 110–448

To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the ''Pickwick Post Office Building''. (Oct. 22, 2008; 122 Stat. 5013)

Last List October 23, 2008

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